



# aida

Asylum Information  
Database

Asylum Information Database

# National Country Report

## *Italy*



## ACKNOWLEDGMENTS

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**The information in this report is up-to-date as of May 2013.**

## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public and includes the development of a dedicated website which will be launched in the second half of 2013. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Statistics

**Table 1: Applications and granting of protection status at first instance**

	Total applicants 2012	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subsidiary protection rate	Humanitarian Protection rate	Rejection rate
		B	C	D	E	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
<b>Total numbers</b>	17,350	2,050	4,495	1,935	5,260	15%	33%	14%	38%
<b>Breakdown by countries of origin of the total numbers</b>									
<b>Pakistan</b>	2365	145	165	375	900	9%	10%	24%	57%
<b>Nigeria</b>	1515	80	145	340	1060	5%	9%	21%	65%
<b>Afghanistan</b>	1365	190	555	100	65	21%	61%	11%	7%
<b>Senegal</b>	940	40	40	50	380	8%	8%	10%	75%
<b>Tunisia</b>	895	80	10	60	580	11%	1%	8%	79%
<b>Ghana</b>	845	20	30	185	235	4%	6%	39%	50%
<b>Somalia</b>	805	280	585	5	20	31%	66%	1%	2%
<b>Mali</b>	785	30	1805	50	185	1%	87%	2%	9%
<b>Eritrea</b>	735	115	90	5	5	53%	42%	2%	2%
<b>Ivory Coast</b>	630	80	190	240	85	13%	32%	40%	14%
<b>Others<sup>1</sup></b>									
<b>Syria</b>	355	95	100	0	15	45%	48%	0%	7%
<b>Russia</b>	25	15	0	0	0	100%	0%	0%	0%
<b>Iran</b>	170	110	15	10	5	79%	11%	7%	4%

Source: Eurostat

<sup>1</sup> Other main countries of origin of asylum seekers in the EU

**Table 2: Gender/age breakdown of the total numbers of applicants in 2012**

	Number	Percentage
<b>Total number of applicants</b>	<b>17350</b>	
<b>Men</b>	14900	86%
<b>Women</b>	2450	14%
<b>Unaccompanied children</b>	970	6%

*Source: Eurostat*

## Overview of the legal framework and practice

### *Main legislative acts relevant to asylum procedures, reception conditions and detention*

Title in English	Original title	Abbreviation	Weblink
Law 722/1954 ratifying and giving execution to the 1951 Geneva Convention	Legge 24 luglio 1954, n. 722 ratifica ed esecuzione della Convenzione relativa allo status dei rifugiati firmata a Ginevra il 28 luglio 1951	L. 722/1954	<a href="http://www.asgi.it/public/parser_download/save/legge.24.luglio.1954.n.722.pdf">http://www.asgi.it/public/parser_download/save/legge.24.luglio.1954.n.722.pdf</a>
Legislative Decree n. 286/98 Consolidated Act on disposition concerning the Immigration regulations and stranger conditions norms" (modified by the Law 189/2002)	Decreto Legislativo 25 luglio 1998, n. 286 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"	TU. 286/98	<a href="http://www.camera.it/parlam/leggi/deleghe/98286dl.htm">http://www.camera.it/parlam/leggi/deleghe/98286dl.htm</a>
Law n. 189/2002 concerning amendments on immigration and asylum	Legge 30 luglio 2002, n. 189 "Modifica alla normativa in materia di immigrazione e di asilo" o "Legge Bossi-Fini"	L. 189/2002	<a href="http://www.camera.it/parlam/leggi/02189l.htm">http://www.camera.it/parlam/leggi/02189l.htm</a>
Law 94/2009 norms on public security (so-called Security Package)	Legge 15 luglio 2009, n. 94 "Disposizioni in materia di sicurezza pubblica" (Pacchetto Sicurezza)	L. 94/2009	<a href="http://www.parlamento.it/parlam/leggi/09094l.htm">http://www.parlamento.it/parlam/leggi/09094l.htm</a>
Legislative Decree n. 140/2005 on minimum standards for the reception of the asylum seekers in Member States	Decreto Legislativo 30 maggio 2005, n. 140 "Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all'accoglienza dei richiedenti asilo negli Stati membri"	Legislative Decree 140/05	<a href="http://www.camera.it/parlam/leggi/deleghe/05140dl.htm">http://www.camera.it/parlam/leggi/deleghe/05140dl.htm</a>
Legislative Decree n. 251/2007 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted	Decreto legislativo 19 novembre 2007, n. 251 "Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta."	Dlgs 251/07	<a href="http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007;251">http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007;251</a>
Legislative Decree n.25/2008 on minimum standards on procedures in Member States for granting and withdrawing refugee status.	Decreto Legislativo 28 gennaio 2008, n.25 "Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato"	Dlgs 25/08	<a href="http://www.camera.it/parlam/leggi/deleghe/08025dl.htm">http://www.camera.it/parlam/leggi/deleghe/08025dl.htm</a>

Legislative Decree n.159/2008 on "Amendments and integration of the legislative Decree of 28 January 2008, n. 25 on minimum standards on procedures in Member States for granting and withdrawing refugee status	Decreto Legislativo 3 ottobre 2008, n. 159 "Modifiche ed integrazioni al decreto legislativo 28 gennaio 2008, n. 25, recante attuazione della direttiva 2005/85/CE relativa alle norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato"	Dlgs 159/08	<a href="http://www.camera.it/parlam/leggi/deleghe/08159dl.htm">http://www.camera.it/parlam/leggi/deleghe/08159dl.htm</a>
Decree Law n. 89/2011 "Urgent dispositions for the full application of the Directive 2004/38/CE on the free movement of EU citizens and for the transposition of the Directive 2008/115/CE on the returning illegally staying third-country nationals, converted into Law 129 of 2 Augusts 2011.	Decreto-Legge 23 giugno 2011, n. 89 "Disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari	Decree law 89/2011	<a href="http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2011;89">http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2011;89</a>

***Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.***

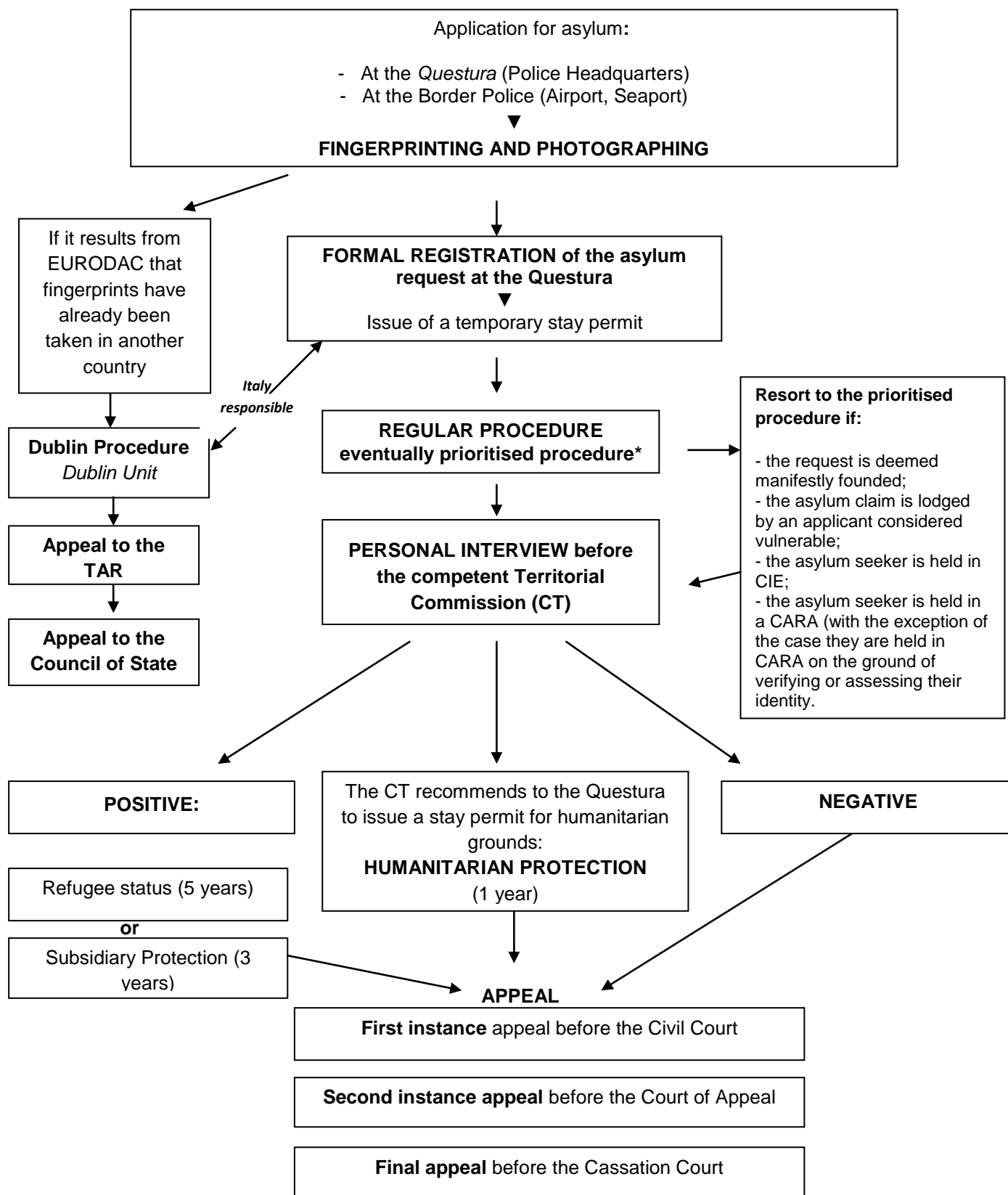
Title in English	Original title	Abbreviation	Weblink
Decree of the President of the Republic n. 394 of 31st August 1999 "Regulation on norms implementing the consolidated act on dispositions concerning the immigration regulations and stranger conditions norms", modified by the Presidential Decree n. 334 of 18 October 2004 on immigration	Decreto del Presidente della Repubblica 31 agosto 1999, n. 394 "Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" aggiornato con le modifiche apportate dal Decreto del Presidente della Repubblica 18 ottobre 2004, n. 334, in materia di immigrazione	D.P.R. 394/1999	<a href="http://www.immigrazione.biz/legge.php?id=22">http://www.immigrazione.biz/legge.php?id=22</a>
Decree of the President of the Republic n. 303 of 16th September 2004 "Regulation on the procedures for the recognition of refugee status	Decreto del Presidente della Repubblica del 16 settembre 2004, n.303 Regolamento relativo alle procedure per il riconoscimento dello status di rifugiato	D.P.R. 303/2004	<a href="http://www.interno.gov.it/mininterno/site/it/sezioni/servizi/legislazione/immigrazione/legislazione_631.html">http://www.interno.gov.it/mininterno/site/it/sezioni/servizi/legislazione/immigrazione/legislazione_631.html</a>



# Asylum Procedure

## A. General

### 1. Organigram



\* **Prioritised procedure:** in a number of circumstances prescribed by the law (art. 28 Legislative Decree 25/2008), asylum requests may be examined under the prioritised procedure which is a shorter procedure compared to the regular one.

## 2. Types of procedures

### Indicators:

Which types of procedures exist in your country?

- |                                 |   |  |
|---------------------------------|---|--|
| - regular procedure:            | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/>            |
| - border procedure:             | yes <input type="checkbox"/>            | no <input checked="" type="checkbox"/> |
| - admissibility procedure:      | yes <input type="checkbox"/>            | no <input checked="" type="checkbox"/> |
| - accelerated procedure:        | yes <input type="checkbox"/>            | no <input checked="" type="checkbox"/> |
| - Dublin Procedure              | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/>            |
| - others: prioritized procedure |   |  |

## 3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority in EN	Competent authority in original language (FR)
Application at the border	Border police	Polizia di frontiera
Application on the territory	Immigration Office of the Police	Questura
Dublin (responsibility assessment)	Dublin Unit	Unità Dublino
Refugee status determination	Territorial Commissions for the recognition of international protection	Commissioni territoriali per il riconoscimento della protezione internazionale
Appeal procedures : -First appeal  -second (onward) appeals	-Civil Tribunal  -Appeal Court -Cassation Court	- Tribunale civile  -Corte d'Appello; -Corte di Cassazione
Subsequent application (admissibility)	Immigration Office of the Police and Territorial Commissions	Questura Commissioni territoriali

## 4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Territorial Commissions and sub-commissions.	The total number is not available.	Ministry of Interior	No

## 5. Short overview of the asylum procedure

The Italian asylum system foresees a single regular procedure, the same for the determination of both the refugee status and the subsidiary protection status.

According to the Italian legislation there is no formal timeframe to lodge an asylum request but asylum seekers should present it as soon as possible. The immigration law prescribes as a general rule, for migrants to present themselves within 8 days from their arrival in Italy.

The asylum claim can be lodged either at the border police office or within the territory at the provincial Police station (Questura) where fingerprinting and photographing are carried out. In case the asylum request is made at the border, police authorities invite the asylum seekers to present themselves at the Questura for the formal registration. Police authorities cannot examine the merit of the asylum application.

The police authorities of the Questura ask questions related to the Dublin II Regulation to the asylum seeker during the formal registration and then contact the Dublin Unit of the Ministry of the Interior which will then verify whether Italy is the State responsible for the examination of the asylum application. If Italy is responsible, the asylum applicant will be invited to go to the Questura to continue the regular procedure.

The police authorities send the registration form and the documents concerning the asylum application to the Territorial Commissions for international protection or Sub-commissions located throughout the national territory, the only authorities competent for the substantive asylum interview. The National Commission not only coordinates and gives guidance to the Territorial Commissions in carrying out their tasks, but also is responsible for the revocation and cessation of the international protection.

These bodies belong to the Department of Civil Liberties and Immigration of the Italian Ministry of Interior. They are independent in taking individual decisions on asylum applications and do not follow the instructions of the Ministry of Interior.

By law, the personal interview before the Territorial Commissions should be carried out within a maximum of 30 days from the date that the claim and related documents are received. The Commissions should take the decision within 3 working days after the interview. In practice the administrative procedure typically lasts for several months.

Within the Italian legislation there is no admissibility/ screening procedure or any border or accelerated procedure. In a number of circumstances prescribed by law, asylum applications may be examined under the **'prioritised procedure'**, meaning that the procedure is shorter. It applies when the request is deemed manifestly founded; when the asylum claim is lodged by an applicant considered vulnerable; or if the asylum seeker has committed crimes or if the person has been given an expulsion or rejection order at the border: these persons are held in CIE -*Centri di identificazione ed espulsione* (Identification and Expulsion Centres). Only in these cases, by law, the Territorial Commissions conduct the personal interview within 7 days from the reception of the documentation from the Questura, and take the decision within the following two days.

Asylum seekers can appeal within 30 days before the competent Civil Tribunal against a negative decision issued by the Territorial Commissions. Rejected asylum seekers in CIE and CARA (Accommodation Centres for Asylum Seekers), with some exceptions, have only 15 days to lodge an appeal. The appeal automatically stays the effect of the decision, with the exception of the following asylum seekers: those who were notified with a rejection or expulsion order before lodging an asylum request; those whose claims were considered "manifestly unfounded"; those who were considered inadmissible; those placed in CIE or in CARA after having been stopped because they avoided or tried to avoid border controls (or immediately after); or those who left the CARA without justification. However, even these individuals can request a stay of the decision from the competent judge.

If the appeal is dismissed it can be appealed to the Court of Appeal within 10 days of the notification of the decision. A final appeal before the highest appellate court (Cassation Court) can be lodged within 30 days of the notification of the dismissal of the previous appeal.

As far as first instance is concerned, the competent body is the Civil Tribunal which does not exclusively deals with asylum appeals.

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators:

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
☐ Yes      ☒ No

Under the law<sup>2</sup>, the asylum claim can be lodged either at the Border Police upon arrival or at the Immigration Office of the Police (hereinafter Questura) if the applicant is already in the territory.

By law, although there is no specific time limit laid down for asylum seekers to lodge their application, the asylum request should be submitted by the applicant as soon as possible unless there is a valid reason excusing the delay. Nevertheless, a delay in filing the request does not affect the asylum process since it cannot be a reason for denying protection.

The procedure for the initial registration of the asylum application, whether at the border or at the Questura, is the same. The first step is an identification and registration process, which entails fingerprinting and photographing that can be carried out either at the border police or at the Questura. This procedure is called *fotosegnalamento*.

At the Questura, in order to apply for asylum, the person is required to have previously indicated a residence - an address which will be then quoted on the permit of stay. By contrast, at the Border Police Office, asylum seekers are not required to provide such residence, that will be indicated after their entry into the Italian territory, and receive a letter (called "*verbale di invito*") inviting them to go to the competent Questura to continue the asylum procedure.

The law does not foresee any financial support for taking public transport to the competent Questura. In practice the NGOs working at the border points can provide the train ticket for that destination on the basis of a specific agreement with the competent Prefecture. However, this support is not always guaranteed.

This preliminary phase is followed by a second step, consisting in the formal registration of the asylum request, which is carried out exclusively at the Questura within the national territory. The formal registration of the application (the so-called *verbalizzazione*) is accomplished through a form<sup>3</sup> (*Modello C/3*, commonly called "*verbale*"). It is filled in with all the information regarding the applicant's personal history, the journey they have undertaken to reach Italy and the reasons they fled from their country of origin. This form is signed by the asylum seeker who receives together with a copy of the *verbale* and copies of all other documents submitted to the police authorities. In practice, before filling in the *verbale*

<sup>2</sup> Article 6 of the Legislative Decree 25/2008

<sup>3</sup> "Modello C/3 -"Modello per il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra" (Form for the recognition of the refugee status in the meaning of the Geneva Convention)

the applicant may provide a written statement concerning their personal story, which can be written in their mother tongue.

According to the Procedure Decree<sup>4</sup>, when a person claims asylum, police authorities inform the applicant about the asylum procedure and their rights and obligations, times and any means (i.e. relevant documentation) at their disposal to support the application. In this regard police authorities should hand over an information leaflet. In addition, the Reception Decree<sup>5</sup> provides that police authorities, within maximum 15 days from the presentation of the asylum request, should provide information related to the reception conditions of the asylum seekers and accordingly hand over information leaflets.

The leaflets, both those illustrating the different phases of the asylum procedure and those concerning the reception conditions, are drafted in 10 languages. However, the practice of distribution of these *brochures* by police authorities is actually quite rare. Moreover, although the Italian legislation does not explicitly state that the information must be provided also orally, in practice it happens but not in a systematic manner and on the discretion of police authorities. Therefore, adequate information is not constantly and regularly ensured mainly due to the inadequate number of police staff dealing with the number of asylum requests as well as to the shortage of professional interpreters and linguistic mediators.

With the filling in of the *verbale*, the formal stage of applying for international protection is concluded. The "*fotosegnalamento*" and the formal registration of the international protection application do not always take place at the same time, especially in big cities, due to the high number of asylum requests and to the shortage of police staff. By law, there is no time frame concerning the formal registration of the asylum request. In practice, the formal registration of the asylum request may take place after weeks from the date the asylum seeker has made their asylum claim.

The delay creates difficulties for asylum seekers who, in the meantime, might not have access to the reception system and the national health system (with the exception of emergency health care). By law, asylum seekers, included in the appeal phase, have the right to obtain a permit to stay with the right to work after 6 months from the presentation of the asylum request. In practice the timeframe of 6 months starts from the date of the formal registration of the claim.

## 6. Regular procedure

### General (scope, time limits)

#### Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months):  
the personal interview must be carried out within 30 days after the determining authorities have received the asylum application from the police authorities and the first instance decision must be taken by the 3 working days following the substantive interview.
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
- As of 31<sup>st</sup> December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered : Not available

<sup>4</sup> art. 10 of the Legislative Decree 25/2008

<sup>5</sup> art. 3 of the Legislative Decree 140/2005

The authorities competent in examining the asylum applications and in taking first instance decisions are the 10 Territorial Commissions for International Protection and sub-commissions, which are administrative bodies specialised in the field of asylum. Each of them is composed by 4 members: 2 representatives of the Ministry of Interior out of which one is a senior police officer, one representative of the Municipality (or Province or Region) and one representative of the UN High Commissioner for Refugees (UNHCR). By law the decision on the merit of the asylum claim must be taken by three members of the Territorial Commission. However, in practice only one member conducts the personal interview, who then presents the case to the other member to take jointly the decision.<sup>6</sup>

The personal interview must be carried out within 30 calendar days after the determining authorities (Territorial Commissions) have received the asylum application from the Questura (Immigration Office of the Police). By law<sup>7</sup>, the decision on the merit must be taken within 3 working days following the substantive interview. However, the law specifies that whenever a Territorial Commission is unable to adopt a decision within 3 days due to the need to gather new elements, the commission has to inform the asylum applicant and the competent Questura.

In practice these time limits are usually much longer considering that the competent determining authorities receive the asylum application only after the formal registration and the forwarding of the *Modello C3* through VESTANET takes place. In addition, the administrative procedure typically lasts for several months, and the delay for the determining authorities to issue a decision vary from one Territorial Commission to another. In some cities, like Rome, the whole procedure takes generally longer, from 6 up to 10 months.

By law, some specific cases are examined by the first instance authorities under a prioritised procedure (shorter). These situations<sup>8</sup> include:

- a) requests deemed manifestly founded;
- b) asylum seeker considered vulnerable<sup>9</sup>;
- c) asylum seekers are held in a CARA with the exception of the case they are held in CARA on the ground of verifying or assessing their identity<sup>10</sup>;
- d) when a person is held in CIE (Identification and Expulsion Centres) in application of article 1 F of the 1951 Geneva Convention, or if they have been convicted for crimes such as smuggling, drugs trafficking and sexual exploitation; or they have been notified with an expulsion or a rejection order at the border.

The timeframe of the prioritised procedure is not envisaged by law, except for asylum seekers held in CIE: in this case the determining authorities must carry out the personal interview within 7 calendar days from the reception of the asylum application and must take a decision within the 2 following calendar days.

In practice the prioritised procedure applies to those held in CIEs and rarely to the other categories, namely when the requests is deemed manifestly founded and in the situations falling under art. 20 of the Procedure Decree 25/2008. Practice shows that vulnerable cases have more chances to benefit from the prioritised procedure, even though this possibility is more effective in case they are assisted by NGOs or they are early identified as such.

In practice with regard to victims of torture and extreme violence, on the basis of CIR (Italian Refugee Council)'s experience, the prioritised procedure is rarely applied since these asylum seekers are not

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<sup>6</sup> Art. 4(4) of the Legislative Decree No. 25/2008.

<sup>7</sup> Article 27 of the Legislative Decree No. 25/2008

<sup>8</sup> Listed in article 28 of the legislative Decree 25/2008

<sup>9</sup> According to art. 8 of the Legislative Decree 140/2005

<sup>10</sup> According to article 20 of the Procedure Decree 25/2008 the prioritised procedure should be applied also in the following cases: 1) asylum seekers who have presented the asylum request after they have been stopped for having avoided or tried to avoid the border controls; 2) asylum seekers presenting the application after being stopped in situation of irregular stay.

identified at an early stage by police authorities. In fact, torture survivors are usually only recognised as such in a later phase thanks to NGOs providing them with legal and social assistance or during the personal interview by the determining authorities.

In practice, the prioritised procedure is also not applied to unaccompanied children mainly because of the delay in appointing their legal guardian by the guardianship judge (*giudice tutelare*).

There are four possible outcomes to the regular procedure.

The Territorial Commission may decide

- a. to recognise refugee status,
- b. to grant subsidiary protection,
- c. not to grant any form of international protection but to recommend to the Police to issue a residence permit on humanitarian grounds, e.g. for health conditions,
- d. reject the asylum application and issue a return order.

### Appeal

#### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
  - ☒ Yes ☐ No
  - o if yes, is the appeal ☒ judicial ☐ administrative
  - o If yes, is it suspensive ☒ Yes ☐ No
- Average delay for the appeal body to make a decision: 6 months /1 year

The legislative Decree No. 25/2008 provides for the possibility for the asylum seeker to appeal before the competent Civil Tribunal (a judicial body) against a negative decision issued by the Territorial Commissions, against a decision to grant subsidiary protection instead of refugee status or to request the issuance of a residence permit on humanitarian grounds.

The appeal must be lodged within 30 calendar days from the notification of the first instance decision and must be presented by a lawyer.

Rejected asylum seekers in detention (CIE) and reception centres (CARA Accommodation Centres for Asylum Seekers), with some exceptions, have only 15 calendar days to lodge an appeal.

The appeal has an automatic suspensive effect, except in the following cases: when an asylum seeker has been notified with a rejection or expulsion order before lodging an asylum request; when the claim has been considered “manifestly unfounded”; when the requests were considered inadmissible<sup>11</sup>; when the requests have been made by applicants placed in CIE or in CARA after having been stopped because they avoided or tried to avoid border controls (or immediately after); or those who left the CARA without justification. However, in those cases, the applicant can request individually a suspension of the return order from the competent judge.

The Tribunal shall issue a judgement within three months from the submission of the appeal<sup>12</sup>. It can either reject the appeal or grant international protection to the asylum seeker. In practice, the average

<sup>11</sup> By law (article 29 of the Legislative Decree 25/2008), an asylum application is considered inadmissible by the competent Territorial Commission in the following cases:

- a. whenever the applicant has been recognised as refugee in a State Party to the 1951 Geneva Convention and can still benefit from such protection;
- b. the applicant has reiterated his/her asylum request after a decision has been taken by the determining authorities without presenting new elements concerning his/her personal conditions of the situation in his/her country of origin.

<sup>12</sup> Article 35 (10) of the Legislative Decree 25/2008



delay for the reviewing body to make a decision exceeds considerably the timeframe foreseen by law: it generally takes six months between the date when the appeal is lodged and the date when the judgement is issued.

By law<sup>13</sup>, if the first instance appeal is dismissed it can be appealed to the Court of Appeal within 10 calendar days of the notification of the decision. The Court of Appeal should then make a decision within three months from the submission of the appeal<sup>14</sup>. The decision is based on points of law and facts. In practice the Court of Appeal takes a decision within at least 5 months. The appeal has no suspensive effect. However, upon an ad hoc request by the appellant, the Court of Appeal may suspend the appeal on serious and well-founded grounds through an order that cannot be challenged. A final appeal before the highest appellate court (Cassation Court) can be lodged within 30 days of the notification of the dismissal of the previous appeal.<sup>15</sup> The Supreme Court takes a decision on the legality and not on the facts (examination of the documents without the adversary proceeding).

According to the legislation<sup>16</sup> the Tribunal and the Court of Appeal must hear the asylum seeker during the appeal procedures. The hearings are not public whereas the decisions are.

Asylum seekers who file an appeal against the first and second judicial instance decision, in particular those who are held in CARAs and CIEs, have to face several obstacles. The time limit of 15 days to lodge an appeal concretely jeopardises the effective enjoyment of the right to appeal since it is too short to find a lawyer or to request free legal assistance, and for preparing the hearing in an adequate manner.

The short timeframe to lodge an appeal does not take due consideration of other factors such as the linguistic barriers between asylum seekers and lawyers, the lack of knowledge of the legal system, the long distance between the residence of the asylum seekers and the competent tribunals.

In addition, lawyers are not always adequately trained to draft good quality appeals.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the regular procedure? ☒ Yes ☐ No
- If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
- Are interviews ever conducted through video conferencing? ☐ Yes ☒ No

The legislation<sup>17</sup> provides for a personal interview of each applicant which is not public. In practice asylum seekers are systematically interviewed by the determining authorities. However, art. 12 (2) foresees the possibility to omit the personal interview where determining authorities have enough elements to grant refugee status under the 1951 Geneva Convention without hearing the applicant, or when the applicant is unable or unfit to be interviewed as certified by a public health unit or by a doctor working with the national health system.

The law provides for the hearing to be conducted, where possible, by an interviewer of the same gender of applicants if requested by them.<sup>18</sup>

<sup>13</sup> Article 35 (11) of the Legislative Decree 25/2008

<sup>14</sup> Article 35 (13) which makes reference to paragraph 10.

<sup>15</sup> Art. 35 (13) of the Legislative Decree 25/2008

<sup>16</sup> Art. 35 (10) of the Legislative Decree 25/2008

<sup>17</sup> article 12 of the legislative Decree n. 25/2008

<sup>18</sup> art. 12 (1) of the legislative Decree n. 25/2008



By law<sup>19</sup>, in the phases concerning the presentation and the examination of the asylum claim, applicants shall receive, where necessary, the services of an interpreter in their language or in a language they understand. At border points these services may not be always available depending on the language spoken by asylum seekers and the interpreters available locally. Because the disembarkation of asylum seekers does not always take place at the official border crossing points, where interpretation services are available, there may therefore be great difficulties to provide promptly an adequate number of qualified interpreters also able to cover different idioms.

In practice there are not enough interpreters available and skilled in working with asylum seekers during the asylum procedure. However, specific attention is given to interpreters ensuring translation services during the substantive interview by determining authorities. The Consortium of Interpreters and Translators (ITC), which ensures this service, has drafted a Code of conduct for interpreters.

Audio or video recording is not used. Interviews are transcribed in a report that is given to the applicant at the end of the interview. The applicants are given the opportunity to make further comments and corrections soon after the personal interview before the final official report is handed over to them.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?  
☐ Yes      ☒ not always/with difficulty      ☐ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?  
☐ Yes      ☒ not always/with difficulty      ☐ No
- In the first instance procedure, does free legal assistance cover:  
☐ representation during the personal interview    ☐ legal advice    ☐ both    ☒ Not applicable
- In the appeal against a negative decision, does free legal assistance cover  
☐ representation in courts      ☐ legal advice      ☒ both      ☐ Not applicable

According to the legislation<sup>20</sup>, asylum seekers may benefit from legal assistance and representation during the first instance of the regular and prioritised procedure at their own expenses. In practice, asylum applicants are usually supported before and sometimes during the personal interview by legal advisors or lawyers financed by NGOs or specialised assisting bodies where they work. Legal assistance provided by NGOs depends mainly on the availability of funds deriving from projects and public or private funding.

The lawyer or the legal advisor from specialised NGOs prepares the asylum seekers for the personal interview before the determining authority, providing them all necessary information about the procedure to follow, pointing out the main questions that may be asked by the Territorial Commission members and underlining the relevant information concerning their personal account. Moreover, the lawyer has a key role in gathering the information concerning the personal story of the applicant and the country of origin information and in drafting a report that, when necessary, is sent to the Territorial Commission, in particular with regard to vulnerable persons, such as torture survivors. In this regard the lawyer may also inform the determining authorities on the fact that the asylum seeker is unfit or unable to undertake the personal interview so that the Commission may decide to omit or postpone it.

Lawyers may be present during the personal interview but they do not play the same role as in a judicial hearing. The applicant has to respond to the questions and the lawyer may intervene to clarify some aspects of the statements made by the applicant.

<sup>19</sup> Art. 10 (4) of the Legislative Decree 25/2008

<sup>20</sup> Article 16 of the Legislative Decree 25/2008.

Nevertheless, the vast majority of asylum applicants go through the personal interview without the assistance of a lawyer since they cannot afford a lawyer and specialised NGOs have limited capacity due to lack of funds.

Asylum seekers that may benefit from a legal assistance or a legal advice before or during the personal interview, especially those who have suffered torture and extreme violence, may have more chances to be granted by the competent Territorial Commission the status of international protection they effectively deserve, accordingly reducing the resort to appeal against a first instance decision. In this context it is important to emphasise that the Procedure Decree foresees the possibility for asylum seekers in a vulnerable condition to be assisted by supporting personnel during the personal interview even though the legal provision does not specify which kind of personnel.<sup>21</sup> During the personal interview the applicant may be accompanied by social workers, medical doctors and/or psychologists.

With regard to the appeal phase, free legal aid (the so-called "gratuito patrocinio"), funded by the State is provided by law<sup>22</sup>. Nevertheless, the Presidential Decree 115/2002<sup>23</sup> concerning the judicial expenses sets out an important restriction to the enjoyment of this right: only those applicants who may prove to have a yearly taxable income lower than 10.628,16 euros may benefit from the free legal aid.<sup>24</sup> The law specifies that in case of income acquired abroad, the foreigner needs a certification issued by the consular authorities of their country of origin<sup>25</sup>. However, the law prescribes that if the person is unable to obtain this documentation, they may alternatively provide a self-declaration of income<sup>26</sup>. In this regard, during the last years there has been a worrying trend developed by the Rome Bar Council which has adopted the practice to require systematically an official certification of the income released by the consular authorities of the country of origin of the asylum seeker concerned in order to guarantee their access to the *gratuito patrocinio*. As underlined by the UNHCR<sup>27</sup> and several NGOs<sup>28</sup>, taking into consideration that in the majority of cases the persecution of asylum seekers is perpetrated by the authorities of their country of origin and, thus, that the persons concerned are in most cases unable to present themselves to the consular authorities to obtain the certification of their income, the practice adopted by the Rome Bar Association prevents many applicants to have access to the free legal aid.

In addition, access to free legal assistance is also subject to a merits test by the competent Bar Council (Consiglio dell'ordine degli avvocati) which assesses whether the asylum seeker's motivations for appealing are not manifestly unfounded.<sup>29</sup> Moreover, it may happen that the applicant is initially granted free legal aid by a Bar Council but, as prescribed by law, the tribunal may revoke the decision if it considers that the admission requirements assessed by the Bar Council are not fulfilled<sup>30</sup>.

Applicants that live in big cities have more chances to be assisted by specialised NGOs or legal advisors compared to those living in remote areas where it is more difficult to find qualified lawyers specialised in asylum law. In practice it might happen that lawyers paid by the Italian State may unlawfully request funds also from the applicants. This practice has been denounced by some NGOs and by some lawyers during some conferences and workshop, and it has also been reported directly to the Italian Refugee Council (CIR) by some asylum seekers.

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<sup>21</sup> Article 13(2) of the Legislative Decree 25/2008.

<sup>22</sup> Article 16 (2) of the Legislative Decree 25/2008.

<sup>23</sup> Presidential Decree 115/2002 – Consolidated rules and regulation on legal costs (*Decreto del Presidente della Repubblica 30 maggio 2002, n. 115, Testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia*).

<sup>24</sup> Art. 76 (1) of the Presidential Decree 115/2002.

<sup>25</sup> Article 79 (2) of the Presidential Decree 115/2002.

<sup>26</sup> Article 94 (2) of the Presidential Decree 115/2002, and specifically with regard to the right of asylum seekers to benefit from the free legal aid article 16(2) of the of the Legislative Decree 25/2008.

<sup>27</sup> UNHCR, [advisory opinion sent to the Rome Bar Council](#), January 2013

<sup>28</sup> On 10th May 2013 a network of NGOs, the Italian Council for Refugees (CIR), ASGI, Laboratorio 53, Associazione Progetto Diritti, Associazione Europa Levante, Senzaconfine, Focus- Casa dei Diritti Sociali, Arci – Roma, Save the children Italia, A buon diritto, Fondazione Centro Astalli, sent a letter to the Ministry of Interior, the Ministry of Justice and to the Ministry of Foreign Affairs with a view to stop the illegal practice of the Rome Bar Council. The letter is available [here](#)

<sup>29</sup> article 126 of the Presidential Decree 115/2002

<sup>30</sup> art.136 of the Presidential Decree 115/2002

## 7. Dublin

### Indicators:

- Number of outgoing requests in the previous year: not available
- Number of incoming requests in the previous year: not available
- Number of outgoing transfers carried out effectively in the previous year: not available
- Number of incoming transfers carried out effectively in the previous year: not available

The information concerning the Dublin procedure provided below have been extracted from the Dublin II Regulation National Report on Italy of December 2012 elaborated by the Italian Refugee Council (CIR) within the framework of the Project “European network for technical cooperation on the application of Dublin II Regulation”.<sup>31</sup>

### Procedure

#### Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? Not available

All asylum applicants are photographed and fingerprinted by police authorities who systematically check them in EURODAC. When there is a Eurodac hit, the police contact the Italian Dublin Unit, an office of the Department for the civil liberties and immigration of the Ministry of Interior.

Moreover, the Questura (Immigration Office of the Police), after the formal registration of the asylum request, on the basis of the information gathered and if it considers that the Dublin II Regulation should be applied, transmits the pertinent documents to the Dublin Unit which examines the criteria set out in the Dublin II Regulation to identify the Member State responsible.

According to the law, the Italian authorities may declare themselves responsible for the examination of applications of asylum seekers held in detention centres (CIEs) or reception centres (CARAs) with the exception of those staying in CARAs in order to have their identity verified.

In case another Member State is considered responsible under the Dublin Regulation, the asylum procedure is declared closed. In case the responsibility of another Member State is established, the Dublin Unit issues a decision that is transmitted to the applicant through the Questura (the Police's Immigration office), mentioning the country where the asylum seeker will be returned and the modalities to appeal against the Dublin decision. Afterwards, the Questura will organise the transfer.

The applicants must then present themselves at the place and date indicated by the Questura. In case the applicant does not present themselves for the transfer (which happens in most cases), the Italian authorities ask the responsible Member State for an extension of the deadline up to 18 months<sup>32</sup>.

The applicants held in CIEs are brought by the police authorities to the border from which they will be transferred to the responsible Member State.

The Dublin Unit has not provided updated data on the enforcement of the discretionary clauses (the sovereignty clause – Art. 3 par. 2 - of the Regulation and the humanitarian one – Art. 15). The last data available (dating back from 2008) out, however, that Italy ordered the enforcement of the above-

<sup>31</sup> Available [here](#)

<sup>32</sup> As envisaged by art. 19 (4) and 20 (2) of the Dublin Regulation

mentioned clauses and decided to have jurisdiction on 178 cases, only 2 of them according to the humanitarian clause.<sup>33</sup> The humanitarian clause seems to be rarely applied.

However, the Italian Dublin unit seems to be applying more frequently the discretionary clauses to cases of vulnerable applicants. Following a Ministerial Circular sent by the Dublin Unit in February 2009, which stated the grounds for asking a revision of a transfer order, many revision requests were filled and the sovereignty clause was applied in many cases.<sup>34</sup>

The application of the humanitarian or sovereignty clauses is not automatic and is subject to a case by case discretionary decision by the Dublin unit, which often takes place upon a request for revision.

Italy has never taken a stand on the necessary automatic enforcement of the sovereignty clause, not even when the transfer to another country would put the asylum seeker at risk of serious human rights violations (in Greece for instance). In this regard, the Italian Refugee Council (CIR) has asked the competent authorities to adopt a general policy to suspend transfers to Greece following the European Court on Human Rights' *M.S.S v. Belgium and Greece* judgement, but the Dublin Unit has never taken an official position on this issue. However, compared to the past years, numbers are now very low; the data provided by the Dublin Unit shows that in 2011 there were 210 outgoing requests to Greece and two were accepted despite the European and the Italian jurisprudence<sup>35</sup>.

Asylum seekers are not properly informed on the different steps in the Dublin procedure. Generally speaking they are not assisted by lawyers but they might be assisted by specialised NGOs. Generally, the interview before the Police during the formal registration of the asylum request is made in a language the asylum seekers do not always fully understand and they are not informed about the reason why some information is requested and its pertinence related to the Regulation's applicability. Indeed, it occurs very frequently that the Immigration Office explains the Dublin procedure in a superficial manner. Furthermore, when asylum seekers in a Dublin procedure receive some explanation from the authorities it is very often not adapted to their education level, which makes it very difficult for them to understand. Having information in writing can be more helpful, but it is not always understandable because of the language barrier, the use of legal terms or because it happens that some asylum seekers are illiterate. From CIR's experience, the majority of the interviewees cannot understand the Dublin procedure and the decision taken by the Dublin Unit. Furthermore, they do not know about their rights and consequently they can hardly lodge an appeal. The Italian Council for Refugees, in the frame of the national European Refugee Fund through the Ministry of Interior, has produced and distributed informative leaflets in ten languages to inform asylum seekers on the Dublin Regulation and the Italian asylum procedure.<sup>36</sup>

As far as "cultural and family ties" are concerned, no specific questions are submitted to asylum seekers about family or other links to a certain Member State, they are not informed about the rules governing family reunion under Dublin criteria or - for example - the possibility, in certain Member States, for unmarried couples living together on a stable relationship, to be considered in the same way as married couples.

After the formal registration of the asylum application, if a procedure for determining the Member State responsible for examining the application starts under the Regulation, no information is provided to the

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<sup>33</sup> CIR "Dubliners Project, final report" April 2010. The data are provided by the Ministry of Interior.

<sup>34</sup> For more information, see CIR, European network for technical cooperation on the application of the Dublin II Regulation, [Dublin II Regulation National Report on Italy](#), December 2012,

<sup>35</sup> With regard to the Italian jurisprudence see: Administrative Tribunal of Lazio, judgement No. 1363/2011 of the 11th February 2011; Administrative Tribunal of Lazio, judgement No. 8508/2010 of the 26th April 2010; Administrative Tribunal of Lazio, judgement No. 1551/2012 of the 15th February 2012.

<sup>36</sup> Italian Council for Refugees (CIR), "The Dublin Regulation and the asylum procedure in Italy. Are you aware of your rights? Guide for asylum seekers", 2012.

asylum seeker, not even when it implies a delay of the whole procedure. During the procedure, it happens frequently that the word “Dublin” figures in the receipt of the asylum claim (cedolino) without providing the asylum seeker with explanation of what this means.

The applicant usually waits for months without knowing if the Dublin procedure started, towards which country it has been addressed and the basis on which it has been laid down. In the majority of cases, it is only thanks to the help of NGOs providing “Dublin cases” with adequate information, that asylum seekers are able to go through the whole procedure. When necessary, the NGOs contact the public authorities to get the required information.

Asylum applicants are informed of the decision of the Dublin Unit concerning the taking back /taking charge of the applicant to another Member State at the end of the procedure when they are notified through the Questura of the transfer decision issued by the Dublin Unit. Asylum seekers may be informed on the possibility to lodge an appeal against this decision generally by specialised NGOs. The appeal has no suspensive effect.

### Appeal

#### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:  
☒ Yes ☐ No
  - o if yes, is the appeal ☒ judicial ☐ administrative
  - o If yes, is it suspensive ☐ Yes ☒ No
- Average delay for the appeal body to make a decision: Not available

According to the law, the transfer decision under Dublin II Regulation can be appealed within 60 calendar days from the notification before the Regional Administrative Tribunal - TAR (Jurisdictional territorial body competent for evaluating in first instance the legitimacy of a decision taken by the Public Administration). TAR is not a specialised body in International Protection Law. At the second instance, the competent body is the Council of State (*Consiglio di Stato*) which is a jurisdictional central body.

The law envisages also the opportunity to lodge an appeal to the President of the Republic within 120 calendar days from the notification of the transfer decision. In this case, unlike the judicial appeal, the applicant may lodge the appeal without the help of a lawyer, even if in practice it is quite difficult to do so autonomously. In case the applicant cannot afford to pay a lawyer, the possibility to require the State to pay for the expenses is foreseen by Presidential Decree 115/2002 (as described above).

The Court, on the basis of the asylum seeker’s story, must evaluate the lawfulness of the transfer decision. In case the Court deems the transfer decision illegitimate, due to a violation of the Dublin II Regulation or of another rule, or when it is necessary for the application of the sovereignty clause, it revokes the transfer decision and declares the Italian authorities’ responsible for the examination of the international protection status. In fact, the Court itself even carries out further investigations when this needed. Furthermore, the Court applies directly, if necessary, the discretionary clauses - both the humanitarian and the sovereignty clause.

The appeal against a decision to transfer the applicant to another Member States under the Dublin Regulation has no automatic suspensive effect vis-à-vis the transfer during the hearing before the Court unless this body grants suspensive effect upon a specific request of the claimant. The transfer is not automatically suspended from the moment the asylum applicant forward their request, but only when the Court takes the decision to halt such measure.

The most frequent appeals are on the basis of the following reasons:

- procedural failures of the Dublin Unit: lack of sufficient investigations in order to determine the Member State responsible, not founded reasoning concerning the transfer decision. This could for example be the case when, during the procedure determining the Member State responsible, the authorities do not verify adequately the real conditions of the claimant or the existence of other circumstances that could change the final decision. The Dublin Unit issues a transfer decision that only indicates the responsible Member State but does not provide any reasoning for the decision.
- violation of the Dublin II Regulation: particularly with reference to the non-respect of the timeframes foreseen by Article 20;
- mandatory application of the discretionary clauses because the Member State is not considered as safe or because the asylum seeker is vulnerable and therefore not transferable.

According to the Italian jurisprudence judges tend to take into account the level of protection and the living conditions of asylum seekers in Greece, Hungary and Malta when taking decisions on the implementation of the Dublin Regulation.

### *Personal Interview*

#### *Indicators:*

- Is a personal interview of the asylum seeker systematically conducted in practice in the Dublin procedure? ☐ Yes ☒ No

According to the asylum legislation, with the exception of the verbalisation of the asylum request by the competent Questura (Immigration Office of the Police), no personal interview of asylum seekers during the Dublin procedure is envisaged.

### *Legal assistance*

#### *Indicators:*

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision? ☒ Yes ☐ not always/with difficulty ☐ No

In order to guarantee an effective remedy the Italian law foresees that in case of appeal the third country national has to be assisted by a lawyer and is admitted to the free legal aid (Patrocinio a spese dello Stato, so-called Gratuito Patrocinio) when the conditions mentioned in the Presidential Decree 115/2002 are met.

The same law and practices described under the section on the regular procedure apply to the Dublin procedure with regard to legal assistance, including the merits and means test. Not all lawyers can provide free legal aid as only those lawyers that are registered on a specific list can do so. Although this is a public list, in practice, it is not easy for asylum seekers to actually find a lawyer who is available. It is often only with the support of an NGO that asylum seekers manage to be assisted by a lawyer free of charge.



### Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries? ☐ Yes ☒ No

In Italy, during recent years there has been a growing tendency to suspend the transfer of asylum seekers to specific EU Member States that normally would be responsible under the Dublin II Regulation. In particular, since 2009 the Dublin Unit has revoked some decisions to take back asylum seekers to Greece, Hungary and Malta, applying discretionary clauses, in particular the sovereignty clause laid down in Art.3.2 of the Regulation.

Nevertheless, the Italian authorities have so far not adopted an official position to systematically suspend all transfers towards a specific country, not even when the transfer to such country would involve a general risk that the person concerned will be subject to gross and systematic violation of their human rights (Greece for instance). As a result the decision whether or not an asylum seeker should be transferred is taken on a case-by-case basis by the Dublin Unit at its discretion.

Several Courts have ordered the suspension of the transfer to certain EU Member States. With regard to transfers to Greece, the process has been long and difficult. The Italian Administrative Judges have considered all transfer decisions to Greece unlawful. In the beginning this was because the EU Directives on international protection were not implemented by that Member State and because Greece automatically rejected all asylum applications that had been “interrupted” upon the return of the asylum seekers in Greece. Afterwards, the decisions were based on the proven fact that in Greece asylum seekers have no access to basic reception conditions and the asylum procedure. These judgements have allowed the use of the Regulation, in order not to transfer to that Country asylum seekers arrived in Italy.<sup>37</sup>

According to a later judgement of TAR-Lazio (no. 1551/2012 dated 15th February 2012)- even though Greece has ratified and implemented the “Asylum Procedures Directive” ( 2005/85/CE) on 11/07/08, the “Qualification Directive” (2004/83/CE) on 30/07/07 and the “Reception Directive” (2003/9/CE) on 13/11/07, and although since July 2008 the automatic denial of access to the asylum procedures in so-called “interrupted” cases has been no longer enforced - “the situation of the asylum seekers in Greece is better than before, but not comparable to that existing in other Member States, as emerges from examining the Recommendation of the United Nations High Commissioner for Refugees on December 2009 (issued after the implementation of the EU Directives in Greek legislation). The TAR in ruling out the inadmissibility of the transfer towards Greece has referred to the UNHCR who stated that “the organization goes on opposing to transfers to Greece according to the Dublin II Regulation taking into account the problems observed in the Greek asylum procedure.”

On the basis of the above-mentioned jurisprudence which recalls the principles of the European jurisprudence, the Dublin Unit, in establishing which State is responsible to examine an asylum claim already submitted, has the obligation to verify the real existing conditions in the Member State responsible under the Dublin Regulation and to enforce the sovereignty clause whenever a situation of violation of the obligations derived from the European provisions and a lack of respect of the standards foreseen by them will be proven. In fact, the lack of evaluation of these circumstances and the consequent transfer to these Member States can lead to a violation of Articles 3 and 13 of the European Convention of Human Rights by Italy.

<sup>37</sup> See Tribunale Amministrativo del Lazio judgement no. 1363/2011 dated 11th February 2011; Consiglio di Stato: parere cautelare ordinanza no. 3428/2009 of the 14th July 2009 and Tribunale Amministrativo del Lazio judgement no 8508/2010 of the 26th April 2010.

The above-mentioned principles have recently been applied in order to declare the transfer decisions to countries such as Hungary unlawful.<sup>38</sup>

In a recent judgement the Court condemned the Italian authorities also to the payment of the judicial expenses “due to the persistence of the Dublin Unit not to enforce the precautionary measures disposed by this Court, concerning transfers to Greece, where many legal arguments are still pending”.<sup>39</sup>

Moreover, it should also be noted that in the jurisprudence the need to apply the sovereignty clause in case of poor health conditions in individual cases has often been expressed.. The TAR - Lazio has deemed these conditions to be valid also when “the asylum seeker presented complex symptoms ascribable to repeated and continuous traumatic experiences and he needed to be frequently subjected to psychiatric and specialist check-ups”.

## 8. Admissibility procedures

The Italian legislation does not foresee admissibility procedures.

## 9. Border procedure (border and transit zones)

Border procedures do not exist in Italian law. Border Police authorities must admit asylum seekers to the national territory and they are therefore channelled through the regular procedure.

## 10. Accelerated procedures

The Italian legislation does not foresee any accelerated procedure.

## C. Information for asylum seekers and access to NGOs and UNHCR

### Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?  
☐ Yes      ☒ not always/with difficulty      ☐ No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?  
☐ Yes      ☒ not always/with difficulty      ☐ No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?      ☐ Yes      ☒ not always/with difficulty      ☐ No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?      ☐ Yes      ☒ not always/with difficulty      ☐ No
- Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  
☐ Yes      ☒ not always/with difficulty      ☐ No

The legislation provides that at the time of submission of the asylum request, police authorities inform the applicants about the asylum procedure, their rights and obligations, and the times and means at their disposal. Information should be provided by handing over to them an informative leaflet<sup>40</sup> illustrating the different phases of the asylum procedure, their rights, information on health services and reception system as well as modalities to access them. The brochures distributed also contain the

<sup>38</sup> Tribunale amministrativo del Lazio, Judgement n. 5292/2012 of the 11th June 2012.

<sup>39</sup> Tribunale amministrativo del Lazio No. 7880/2012.

<sup>40</sup> Art. 10 (1) of the Legislative Decree 25/2008



contact details of UNHCR and other refugee-assisting NGOs. The legislation specifies that these leaflets must be elaborated in a language understandable by the asylum seeker or, if this is unfeasible, in English, French, Spanish, Arabic, according to the preference of the person concerned.<sup>41</sup> However, in practice, these leaflets have been drafted by the Ministry of Interior in 10 languages<sup>42</sup>.

In addition, under the law, Police authorities should provide, within maximum 15 days from the presentation of the asylum request, information related to the reception conditions of the asylum seekers and hand over information leaflets.<sup>43</sup>

The practice of distribution of the mentioned brochures concerning both the asylum procedure and reception conditions is actually quite rare. In practice, information is not systematically provided, mainly due to the inadequate number of police staff dealing with the amount of asylum requests and due to the shortage of professional interpreters and linguistic mediators.

By law, in all phases of the submission and the examination of the asylum claim, asylum seekers should receive, where necessary, the services of an interpreter in their language or in a language they understand.<sup>44</sup> This provision also prescribes that in case the information/communications cannot be provided in the first language required by the asylum seeker, they should be given in English, French, Spanish or Arabic according to the preference expressed by the person concerned.

In practice, there is an overall lack of enough and skilled interpreters at any stage of the asylum process. During the phase of fingerprinting and of the formal submission of the asylum request at the Questura (Immigration Office of the Police), the police authorities do not inform asylum seekers on the different steps concerning the Dublin procedure and the correlated applicants' rights and obligations, or it occurs very frequently that the Immigration Office explains the Dublin procedure in a superficial manner. Furthermore, the information given is not always understandable since it is provided without taking into consideration the education level of asylum applicants.

Asylum seekers are not informed on the different criteria applied to identify the Member state responsible under the Dublin Regulation, such as to possibility to join a family member.

After the formal submission of the asylum application, asylum seeker do not receive any more information on the application of the Dublin Regulation to their case, , not even when it implies a delay on the whole procedure. The applicant usually waits for months without knowing if the Dublin procedure started, towards which country it has been addressed and the basis on which it has been laid down.

In the majority of cases, it is only thanks to the help of NGOs which provide "Dublin cases" with adequate information, that asylum seekers are able to go through the whole procedure. When necessary, the NGOs contact the public authorities to get the information needed.<sup>45</sup>

Depending on the type of accommodation centres where asylum seekers are placed, they will receive different quality level of information and interpretation services. Asylum seekers may benefit from the assistance of NGOs, however, due to insufficient funds or because these organisations are located mainly in big cities, not all asylum seekers have access to them.

The law provides for an explicit obligation for the competent authorities to guarantee the possibility to contact UNHCR and NGOs to asylum seekers during all phases of the asylum procedure.<sup>46</sup> Moreover, the law specifies that the access to the detention centres (Centre for Identification and Expulsions -

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<sup>41</sup> Article 2 (6) of the Presidential Decree 303/2004 read in combination with article 4.

<sup>42</sup> For more details, visit the Ministry of Interior [website](#)

<sup>43</sup> Art. 3 of Legislative Decree 140/2005.

<sup>44</sup> Art. 10 (4) of the Legislative Decree 25/2008

<sup>45</sup> See European network for technical cooperation on the application of the Dublin II Regulation, *National Report Italy*, December 2012

<sup>46</sup> Article 10 para. 3 of the Legislative Decree n. 25/2008

CIEs) shall be ensured to the representatives of the UNHCR, to lawyers and to entities working for the protection of refugees, which are authorised by the Ministry of the Interior.<sup>47</sup>

By law<sup>48</sup>, at the border, “those who intend to lodge an asylum request or foreigners who intend to stay in Italy for over three months” have the right to be informed about the immigration and asylum law by specific services at the borders run by NGOs. These services, located at the official border points, also ensure “social counselling, interpreting service, search for accommodation, contact with local authorities/services, production and distribution of informative documents on specific asylum issues”<sup>49</sup>.

With regard to third-country nationals who arrive by boat at non-official border points, UNHCR in the frame of the Praesidium project provides information on the right to seek for asylum at arrival, monitors access to legal assistance and identifies vulnerable cases.<sup>50</sup>

In April 2011, the former Minister of Interior issued a circular letter prohibiting the access to CIEs to the media, independent organisations (with some exceptions mentioned in the letter) and of civil society to the CIEs.<sup>51</sup> This caused a strong mobilisation of NGOs and the media that led to the *LasciateCIEntrare* (Open Access Now) campaign. In December 2011, the Directive No. 11050 issued by the Ministry of Interior revoked the circular letter, specifying, nevertheless, that Prefectures can prohibit the access to CIEs not only for public order reasons, but also for safety reasons, in cases of facility’s renovation. According to the Senate’s report, in practice, difficulties concerning the authorisation to access CIEs still remain due to the excessive discretion of the Ministry of the Interior.

Within the frame of the Praesidium Project IOM, UNHCR, the Red Cross and Save the Children benefit from access to CIES. Nevertheless, these organisations are still not given full and continuous access to these centres. Moreover, other organisations find it difficult to access the centres at will. Thus, it is necessary to move beyond the project-based Praesidium initiative and establish a nation-wide institutional framework in which NGOs, international organisations, journalists and lawyers can freely access and monitor the facilities, and the implementation of recommendations is transparent and easily monitored.<sup>52</sup>

## D. Subsequent applications

### Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
☐ Yes      ☒ No
- Is a removal order suspended during the examination of a first subsequent application?  
☒ Yes      ☐ No
- Is a removal order suspended during the examination of a second, third, subsequent application?  
☒ Yes      ☐ No

According to the legislation, the applicant has the right to submit new elements and documents to the competent Territorial Commission (TC) in any phase of the asylum procedure, even after their personal

<sup>47</sup> Article 21 paragraph 3 of the Legislative Decree n. 25/2008

<sup>48</sup> Art. 11 (6) of the Legislative Decree 286/98, read in conjunction with Article 4 of the Ministry of Interior Decree of 22 December 2000.

<sup>49</sup> CIR, S.A.B. Project, Services at Borders: a practical cooperation, Final report, 2008, p. 21.

<sup>50</sup> For more detail on *Praesidium* Project see [here](#)

<sup>51</sup> Circular Letter n. 1305 by the Ministry of Interior, April 2011.

<sup>52</sup> UN Special Rapporteur on the human rights of migrants, [Report drafted following his third country visit in Italy during his regional study on the human rights of migrants at the borders of the European Union](#), 8 October 2012  
See also *Medici per i Diritti umani, Arcipelago CIE: indagine sui centri di identificazione ed espulsione italiani (Archipelgo CIE: survey of Italians identification and expulsion centres)*, May 2013, at p. 28.

interview.<sup>53</sup> In addition, in case the asylum seekers make a subsequent application before the determining authorities have taken the decision on their initial asylum request, the new elements of the request are examined in the framework of the previous request leading to a unique decision issued by the Territorial Commissions. In the decision the competent authorities specify if the applicant made more than one asylum request indicating the statements and documents attached to each request. Subsequent applications have to be lodged before the Questura (Immigration Office of the Police) which starts a new formal registration that will be forwarded to the competent Territorial Commission.

Under the law, the Territorial Commission shall declare inadmissible an asylum request that has been submitted for the second time after a decision has been taken by the determining authorities without presenting new elements concerning the personal condition of the asylum seeker or the situation in their country of origin.<sup>54</sup> In case of a subsequent application, the TC makes a preliminary assessment in order to evaluate whether new elements have been added to the asylum request, and takes a decision without proceeding to an examination on the merit of the asylum application and without conducting a personal interview.<sup>55</sup>

In practice the Territorial Commissions tend to carry out a personal interview even when the new elements provided by asylum seekers on their personal story that are in contradiction with their previous declarations, taking in due consideration the negative consequences for the person concerned in case of an inadmissibility decision.

The National Commission of the right of asylum<sup>56</sup> (*Commissione nazionale per il diritto di asilo*) has issued a Circular on the 30th April 2010 addressed to the Territorial Commissions indicating that the Territorial Commission which receives the subsequent application should transmit all relevant documentation to the Commission which took the first decision, as they will be in charge of taking the decision on the subsequent application.

The Italian legislation does not foresee a specific procedure to appeal against a decision on inadmissibility for subsequent applications. The legislation provides that asylum seekers can lodge an appeal against inadmissibility decisions without a suspensive effect. However, the appellant can request a suspension of the decision of inadmissibility based on serious and well founded reasons, to the competent judge who takes a decision on this request within the following 5 days. For the rest of the procedure, the same provisions than for the appeal in the regular procedure apply (see Appeal section, Regular procedure).

Asylum seekers who lodge a subsequent application benefit from the same legal guarantees foreseen for asylum seekers in general and can be accommodated in accommodation centres (CARA), if places are available.

Considering that subsequent applications are examined under the regular procedure, they can be assisted by a lawyer at their expenses (like any other asylum seeker) during the first instance administrative procedure whereas they benefit from the free legal assistance during the appeal phase (see section on Legal Assistance, Regular procedure).

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<sup>53</sup> Article 31 (1) of the legislative Decree 25/2008

<sup>54</sup> art. 29 (1 b) of the legislative Decree 25/2008

<sup>55</sup> art. 29 (1 b) of the legislative Decree 25/2008

<sup>56</sup> The National Commission coordinates the Territorial Commissions and is also responsible for the revocation and cessation of the international protection.

## E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

### 1. Special Procedural guarantees

#### Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☒ No ☐ Yes, but only for some categories
- Are there special procedural arrangements/guarantees for vulnerable people? ☒ Yes ☐ No ☐ Yes, but only for some categories

There is no procedure defined in law for the identification of vulnerable persons. Additionally, no national plan exists defining the procedures, roles and functions of public and private actors involved in the identification, referral and care of torture survivors, nor for coordination of services, nor for an effective monitoring system. Consequently, the identification of and assistance provided to torture survivors are often carried out without a common and coordinated framework.<sup>57</sup>

Identification of victims of torture or extreme violence may occur at any stage of the asylum procedure by lawyers, competent authorities, professional staff working in reception centres and specialised NGOs.

Despite the lack of specific provisions and of a comprehensive national plan, good practices have been developed and adopted in part thanks to projects funded at EU, national and international levels.

Since 1996, the Italian Council for Refugees (Consiglio Italiano per i Rifugiati – CIR) has carried out several projects under the acronym Vi.To (Victims of Torture)<sup>58</sup>, providing interdisciplinary services such as legal, social and psychological counselling and assistance to torture survivors.

Moreover, in 2007, the National Commission for the Right of Asylum, UNHCR, CIR and the Centre for the Study and the treatment of post-traumatic and stress pathologies of the San Giovanni Hospital in Rome - established NIRAST (Italian Network for Asylum Seekers who Survived Torture).<sup>59</sup> This network worked to improve standards of identification as well as the psychosocial and legal services provided to torture survivors. Through the project determining authorities were trained, and a process of exchange and capacity building on these issues was promoted. Furthermore, ad hoc training sessions have been conducted involving 10 national Medical Psychological Centres (part of the National Health System) located near the Territorial Commissions. These training sessions, specifically directed to health professionals working inside the CARAs and in the ASLs (Local Public Health Units), have resulted in a network of medical centres all over Italy with staff who are competent to identify, treat and draft medico-legal reports on behalf of torture victims.

NIRAST produced a questionnaire specifically designed to assist in identifying torture survivors, the “Clinical Interview for the Early Identification of Torture Survivors” (hereafter ETSI Interview). NIRAST also trained the medical and psychological teams operating in the CARA regarding the use of the ETSI Interview. When a large number of asylum seekers need to be screened, the ETSI Interview can be used as a Triage evaluation to determine the likelihood that a person has experienced extreme trauma, and the urgency for specialised care. Currently this tool is being tested by some NGOs and caseworkers Cameroon and Chad with the aim to further disseminate it. Moreover, NIRAST also designed a referral procedure to ensure that those identified as possible torture survivors receive prompt specialised medical and psychological care from the NIRAST centres. However, this Network had to shut down in March 2012 due to lack of funds, and is currently looking for new grants to fund it.

<sup>57</sup> CIR, *Maieutics “Elaborating a common interdisciplinary working methodology (legal-psychological) to guarantee the recognition of the proper international status to victims of torture and violence”*, December 2012, at p. 55-57;

<sup>58</sup> More information available [here](#)

<sup>59</sup> More information available [here](#)

In detention centres (CIEs -Centres for Identification and Expulsion), legal assistance and psychological support is not systematic. To date, no protocol on early identification of and assistance to vulnerable persons, and on the referral system to specialised services and/or reception centres has been adopted. Although standards of services in CIE centres are planned following the national regulation on management of the centres, they are insufficient and inadequate, especially for vulnerable categories of individuals. Moreover, the quality of services may differ from one CIE to another.

During the personal interview, if the members of the Territorial Commissions suspect that the asylum seeker may be a torture survivor they may refer them to specialised services and suspend the interview. In 2005, the National Commission for the Right of Asylum issued “Guidelines for the assessment of applications for the recognition of the refugee status”.<sup>60</sup> These Guidelines make reference to the standards and techniques to be used during the substantive interview. Special attention is given to the communication barriers due to the effects of trauma suffered by asylum seekers, emphasising that it is the duty of the interviewer to try to obtain the pertinent elements of the personal history. The Guidelines underscore the usefulness of medical reports to corroborate the declarations made by the torture survivors who have difficulties disclosing their personal stories. The Guidelines instruct that when asylum seekers manifest serious difficulties in answering questions during the substantive interview, members of the Territorial Commissions should make contact with specialised services, not only out of interest for the well-being of the asylum seekers but also in order to obtain additional useful information concerning their health and pertinent elements of their personal stories. It should be underlined the necessity to foresee ad hoc procedures and Guidelines focused on the modalities to interview vulnerable groups (children, traumatised persons, survivors of torture and violence) as well as skilled personnel competent to deal with these cases.

Vulnerable persons are admitted to the prioritised (shorter) procedure. In practice, when the police have elements to believe that they are dealing with vulnerable cases, they inform the Territorial Commissions which fix the personal interview as soon as possible, prioritising their case over the other asylum seekers under the regular procedure. Moreover, this procedure is applied also in case the Territorial Commissions receive medico-legal reports from specialised NGOs, reception centres and Health centres.

The identification of vulnerable asylum seekers is not mainstreamed in the training of police authorities, caseworkers, or interpreters.

The law requires the National Commission for the Right of Asylum which coordinates the Territorial Commissions to ensure training and refresher courses to its members and Territorial Commissions staff. Training is supposed to ensure that those who will consider and decide on asylum claims will take into account an asylum seeker’s personal and general circumstances, including the applicant’s cultural origin or vulnerability. In 2012 the National Commission organized no training at central level. However, *ad hoc* trainings addressed to the Territorial Commissions personnel were organised locally.

By law, the National Commission should also provide training to interpreters to ensure appropriate communication between the applicant and the official who conducts the substantive interview. However, in practice interpreters do not receive any specialised training. Some training courses on asylum issues are organised on ad hoc basis, but not regularly.

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<sup>60</sup>See “Linee Guida per la valutazione delle richieste di riconoscimento dello status di rifugiato”, Ministero dell’Interno, Commissione Nazionale per il diritto D’asilo, anno 2005, pp. 83-85.

## 2. Use of medical reports

### Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
☐ Yes      ☐ Yes, but not in all cases      ☒ No
- Are medical reports taken into account when assessing the credibility of the applicant's statements?      ☒ Yes      ☐ No

The Italian legislation has not introduced a specific provision explicitly foreseeing the possibility of a medical report in support of the applicant's statements regarding past persecutions or serious harm. Nevertheless, Legislative Decree No. 251/2007 (Qualification Decree) states that the assessment of an application for international protection is to be carried out taking into account all the relevant documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm.<sup>61</sup>

According to the legislation, the Territorial Commissions may omit the personal interview when the applicant is unable or unfit to face the interview as certified by a public health unit or a doctor working with the National Health System.<sup>62</sup>

In practice, the medico-legal reports are generally submitted to the Territorial Commissions by specialised NGOs, legal representatives and personnel working in the reception centres before, or sometimes during or after, the substantive interview at first instance. They may also be submitted to the judicial authorities during the appeal stage.<sup>63</sup>

The Territorial Commissions consider these reports very useful in assisting them to properly conduct the personal interviews with vulnerable persons and, in evaluating the credibility of the applicant's personal story with a view to take a fair decision. During the *ad hoc* training addressed to the members of the Territorial Commissions, CARAs staff and other authorities, organised by CIR in collaboration with the National Commission for the right of asylum, the determining authorities have stressed the importance of receiving medico-legal reports before the personal interview by experts with a view to adopt a proper decision. In addition, from the decisions of the determining authorities examined it emerges that in cases where the personal story is deemed not consistent but a medical-legal report has been issued by an expert to explain the reasons of this inconsistencies, the Territorial Commissions usually consider the contents of the medico-legal report and grant the proper form of international protection.

It may happen (not systematically) that the Territorial Commissions have consultations with experts before, after or during the personal interview in case the asylum seekers are accompanied by these experts.

The degree of consistency between the clinical evidence and the account of torture is assessed in accordance with the Guidelines of the Istanbul Protocol and recent specialised research.<sup>64</sup> However,

<sup>61</sup> Article 3 of the Legislative Decree No. 251/2007 on minimum standards for the qualification and status of third country nationals as refugees or as persons who otherwise need international protection

<sup>62</sup> Article 12(2) of the Legislative Decree 25/2008

<sup>63</sup> CIR, Maieutics "[\*Elaborating a common interdisciplinary working methodology \(legal-psychological\) to guarantee the recognition of the proper international status to victims of torture and violence\*](#)", December 2012, at p. 61;

<sup>64</sup> See in this regards: CIR, Maieutics, *op. cit.*; Van der Kolk B.A., Roth S., et alii, *Disorders of Extreme Stress: The Empirical Foundation of a Complex Adaptation to Trauma*, (2005) Journal of Traumatic Stress, Vol. 18, No. 5, pp. 389–399; Van der Kolk B.A., McFarlane A.C., Weisaeth L., *Traumatic Stress*, Guilford Press, 1996; Bromberg, P.M., *Standing in the spaces: Essays on clinical process, trauma, and dissociation*, (1998) New Jersey: Analytic Press; Mears R., *Intimacy and Alienation: Memory, Trauma, and Personal Being*, Brunner-Routledge, 2001; Bromberg, P.M. *The shadow of the tsunami and the growth of the relational mind*, Routledge, 2011.

asylum seekers, in particular those not living in reception centres or those living in remote areas, may have less or no chance to be detected and referred to specialised services due to a lack of information and specialised counselling.

### 3. Age assessment and legal representation of unaccompanied children

#### Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?  
☐ Yes      ☒ No
- Does the law provide for the appointment of a representative to all unaccompanied children?  
☒ Yes      ☐ No

The Italian legislation includes a specific provision concerning the identification of unaccompanied children. It foresees that in case of doubts on the age of the asylum seeker, unaccompanied children can be subjected to an age assessment through non-invasive examinations.<sup>65</sup> The age assessment can be triggered by the competent authorities at any stage of the asylum procedure. However, before subjecting a young person to a medical examination it is mandatory to seek consent of the unaccompanied child concerned or of their legal guardian.<sup>66</sup> The refusal by the applicant to undertake the age assessment has no negative consequences on the reception of the asylum request.

This legislation however does not clearly lay down detailed rules on the age assessment methods; it only specifies that the age assessment must be carried out through non-invasive medical examinations.

According to Circular No. 17272/7 it is necessary to resort to all kind of examinations, giving however priority to the medical examinations carried out in public health structures with paediatric departments.<sup>67</sup> This Circular emphasises that considering that the age assessment cannot lead to an exact result, the benefit of the doubt principle should be always applied when doubts remain concerning the real age of the applicant.

In practice, as underlined by several NGOs, in most cases where asylum seekers declare to be children or are suspected to be adults by the police, they are subjected to the age assessment procedure, which is often not carried out by specialised doctors through x-ray methods.<sup>68</sup> In fact in the 5<sup>th</sup> Report on the monitoring of the Convention on the Rights of the Child in Italy (2011-2012) the CRC Group recommend that the age assessment is carried out in health facilities and by specialised personnel.<sup>69</sup>

With regard to the appointment of a legal representative to an unaccompanied child, the legislation states that when an asylum request is made by an unaccompanied child, the competent authority suspends the asylum procedure and immediately inform both the Juvenile Court (Tribunale per i minorenni) and the Judge for guardianship (Giudice tutelare).<sup>70</sup> The Judge for guardianship has to appoint a legal guardian within 48 hours following the communication by the Police Immigration Office (Questura). The Italian legislation foresees no exception to this rule.

<sup>65</sup> Article 19 (2) of the Legislative Decree 25/2008

<sup>66</sup> *Ibidem*

<sup>67</sup> Circular No. 17272/7 of the 9 July 2007 of the Ministry of Interior for the age assessment

<sup>68</sup> Analysis and position of Save the children Italy on the Protocol concerning the assessment of the age of unaccompanied minors elaborated in June 2009 by the Ministry of Labour, the Ministry of Health and that of Social Affairs, September 2010. See also: Save the Children Italia, Principi Generali in Materia di Accertamento dell'Età, July 2009.

<sup>69</sup> Gruppo CRC, 5 Rapporto di aggiornamento sul monitoraggio della Convenzione sui diritti dell'infanzia e dell'adolescenza in Italia 2011-2012 (5<sup>th</sup> update report on the monitoring of the Convention on the Rights of the Child in Italy), p. 111-112.

<sup>70</sup> Article 26 of the Legislative Decree 25/2008



The legal guardian, when appointed, takes immediately contact with the police authorities to confirm and reactivate the asylum procedure and the adoption of measures related to the accommodation and the care of the child.

According to the Legislative Decree 25/2008 the legal guardian has the responsibility to assist the unaccompanied child during the whole asylum procedure, and even afterwards, in case they receive a negative decision on their claim.<sup>71</sup> For this reason the legal guardian accompanies the child to the police, where they are fingerprinted if they are over 14, and assists the child in filling the form and formalise the asylum claim. The legal guardian has also a relevant role during the personal interview before the determining authorities, who cannot start the interview without their presence. The legal guardian must be authorised by the judge for guardianship to make an appeal against a negative decision. In practice this happens rarely because in general legal guardians do not consider necessary to appeal the decisions due to the fact that children already got a form of protection status or they could obtain a stay permit until they are 18. In addition, guardians may think that the appeal is useless or that the judicial procedure would be too burdensome.<sup>72</sup>

The asylum legislation does not foresee any specific provision concerning the possibility of appeal by unaccompanied children themselves, even though in theory the same provisions foreseen for all asylum seekers are also applied to them.

The system of legal guardianship is not specific to the asylum procedure. A legal guardian is appointed when children do not have legal capacity and no parents or other relatives or persons who could exercise parental authority are present in the territory<sup>73</sup>. The guardian is responsible for the protection and the well-being of the child. Usually the Mayor of the Municipality where the minor is residing is appointed as guardian. In practice he delegates this duty to individuals who provide social assistance or other services for the Municipality. These persons have to deal with a high number of other vulnerable persons (elderly, handicapped, etc...) and have no time to accomplish properly their mandate.

Guardianship could also be granted to "volunteer guardians", a category of qualified persons that have received special training, though this option is not systematically applied. In Venice there is a register of specifically trained "voluntary guardians", and they are appointed within two months from the moment a request is lodged.

There are no legal provisions specifying that legal guardians should be trained and possess expertise in the field of asylum. In general, the legal guardians are not specifically trained to deal with asylum seekers. There is no monitoring system in place to verify how legal guardians act and perform their mandate.

In practice, legal guardians tend to meet the child only during the formal registration of the asylum request and the hearing before the Territorial Commission, as it is strictly required by law.

Legal guardians are rarely appointed within 48 hours as prescribed by the law. Judges for guardianship tend to appoint the legal guardians after several weeks from the submission of the asylum request and not to appoint a legal guardian when a child is 17: in such cases the child cannot reactivate the asylum procedure because they have no legal capacity. Therefore, children are obliged to wait until they turn 18 to make a new asylum request. However, in practice this has never been applied before.

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<sup>71</sup> Art. 19 sub-section 1 of the "Procedures" Decree

<sup>72</sup> France terre d'asile and CIR, *Right to asylum for unaccompanied minors in the European Union. Comparative study in the 27 EU countries*, 2012

<sup>73</sup> Art. 343 and following of the Civil code



## F. The safe country concepts

### Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure? ☐ Yes ☒ No
- Does national legislation allow for the use of safe third country concept in the asylum procedure? ☐ Yes ☒ No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure? ☐ Yes ☒ No
- Is there a list of safe countries of origin? ☐ Yes ☒ No
- Is the safe country of origin concept used in practice? ☐ Yes ☒ No
- Is the safe third country concept used in practice? ☐ Yes ☒ No

The safe country concepts are not applicable in the Italian context

## G. Treatment of specific nationalities

The National Commission for the Right of Asylum issued on 15 June 2012 a Circular<sup>74</sup> to the Territorial Commissions indicating that due to the serious humanitarian crisis in Mali, in principle, asylum seekers from Mali should at least be granted subsidiary protection. This Circular specifies also that subsequent asylum applications from asylum seekers from Mali who had previously received a negative decision, should be given priority.

Somalis also generally obtain a form of protection (international protection or humanitarian status) due to the long-lasting instability in Somalia.

Following the exceptional influx of migrants coming from North African countries, mainly due to the conflict in Libya and the politico-social uprisings in Tunisia and Egypt, Italy declared a state of humanitarian emergency on 12 February 2011. As a result, a special system to receive about 19.000 North African migrants and asylum seekers was organised and managed by the National civil protection system. All the individuals among these people who manifested the willingness to present an asylum application have been admitted to the regular asylum procedure.

Non Libyan nationals who had resided many years in Libya and/or had been victims of torture or inhuman treatment were granted a residence permit on humanitarian grounds after having been admitted to the regular asylum procedure, although they were not subject to persecution or serious harm in their countries of origin.

It is worth noting that the Ministry of Interior has issued a Circular (N. 400/C/2012) on 31 October 2012 stating that those non Libyan nationals already notified with a negative decision on their asylum claim could ask for a re-examination of their asylum request.

UNHCR, IOM and Save the Children, in the framework of *Praesidium* project, have denounced through a press release issued on 30 April 2013 the widespread practice adopted by Italian authorities towards a hundreds of Egyptians and Tunisians who were prevented from lodging asylum requests and were subsequently returned to their country of origin without having had the possibility to enter in contact with the mentioned organizations.<sup>75</sup>

<sup>74</sup> Circular 4369 of the Ministry of Interior of 15 June 2012, available [here](#)

<sup>75</sup> UNHCR, [Le organizzazioni umanitarie chiedono di incontrare i migranti egiziani e tunisini che sbarcano sulle coste italiane](#) (The humanitarian organisations request to meet with the Egyptian and Tunisian migrants that

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - o During the regular procedure:
    - ☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - o during the Dublin procedure:
    - ☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - o During the appeal procedure (first appeal and onward appeal):
    - ☐ Yes ☒ Yes, but limited to reduced material conditions ☐ No
  - o In case of a subsequent application:
    - ☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

In Italy there is no structural legislation on reception conditions and no uniform reception system.

On the basis of Reception Decree No. 140/2005, asylum seekers who lack financial resources to ensure an adequate standard of living for the health and the subsistence of themselves and their family<sup>76</sup> can present a reception request when they lodge their asylum claim<sup>77</sup>.

The reception request is transmitted by the Questura (Immigration Office of the Police) to the Prefecture, which is in charge of carrying out the assessment of resources on the basis of the criteria laid down for the granting of a tourism visa<sup>78</sup>. It is worth noting that the assessment of the financial resources is not carried out in practice by the Prefecture which considers valid the self-declarations made by the asylum seekers<sup>79</sup>.

The Prefecture is also in charge of finding a place for the asylum seekers in reception centres<sup>80</sup>. The Prefecture consults the SPRAR (System of protection for asylum seekers and refugees) to verify availability in its structures<sup>81</sup>. If there is no place in the SPRAR system, asylum seekers can be referred to CARAs (identification centres for asylum seekers).

The SPRAR, established in 2002<sup>82</sup>, is a publicly funded network of local authorities and no-profit organisations which accommodates asylum seekers, refugees and other beneficiaries of international protection. It is formed by small reception structures where assistance and integration services are provided (for more details please refer to section 3 “Types of accommodation”). The CARA centres were established in 2008 and replaced previous identification centres<sup>83</sup>.

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disembarked on the Italian coast), 30 April 2013; UNHCR, [Recommendations on important aspects of refugee protection in Italy](#), July 2012, at p. 7.

<sup>76</sup> Art. 5(2), *ibidem*

<sup>77</sup> Art. 6(1) of the Legislative Decree No. 140/2005.

<sup>78</sup> See Legislative Decree n. 286/1998, art. 4(3).

<sup>79</sup> M. Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011.

<sup>80</sup> Art. 6(2) of the Legislative Decree No. 140/2005.

<sup>81</sup> Art. 5(2) of the Reception Decree No. 140/2005.

<sup>82</sup> Law 189/2002 concerning amendments on immigration and asylum.

<sup>83</sup> See Legislative Decree No. 25/2008.

By virtue of art. 20 of the Procedure Decree No. 25/2008 asylum seekers should be accommodated in CARAs for identification reasons only:

- a) if they do not have travel or identity documents or if they have false or counterfeited documents;
- b) if the asylum request has been lodged after the asylum seeker has been stopped for having escaped or attempted to escape the border controls or soon after;
- c) if they present their asylum request after being stopped for irregular stay in the Italian territory<sup>84</sup>.

In practice, many asylum seekers are placed in CARAs without meeting the criteria set by art. 20 due to a lack of places available in other reception centres and SPRAR System. Therefore, the CARAs provide not only mere first reception for identification reasons, but also reception in residual way.

It is worth noting that most of the asylum seekers coming by boat are placed in CARAs by virtue of art. 20 letter b, although NGOs have criticised this policy taking into account that those people are forced to flee by boat and have no other means to arrive in Italy and in the EU.

Upon arrival, asylum seekers may also be temporarily placed in CDAs (created in 1995, general first accommodation centres for irregular migrants, but used also for asylum seekers) and CPSAs<sup>85</sup> (first aid and reception centres for migrants and asylum seekers) depending on what is available locally.

Concerning the length of stay, by law, the asylum applicant has access to reception measures from the moment they make an asylum request before the police authorities until they receive the communication concerning the decision on their asylum claim.<sup>86</sup>

The maximum stay in CARAs is 20 days if asylum seekers do not have travel or identity documents or if they have false or counterfeited documents and 35 days<sup>87</sup> in the other cases. Anyway, the actual stay is extended systematically to 6 months and more<sup>88</sup> due to the fact that the asylum procedure lasts several months.

In practice, asylum seekers are referred to second accommodation centres (SPRAR – System of protection for asylum seekers and refugees) depending on the availability of places and the urgency and the vulnerability of the case. Asylum seekers stay in the SPRAR typically for 6 months up to 11 months.

If the decision on the asylum request is not adopted within 6 months after its submission, the asylum seeker receives a new 6 month residence permit allowing them to work until the end of the asylum procedure.<sup>89</sup> Asylum seekers who have a job may continue to benefit from the reception measures in the accommodation centre provided that they contribute financially.<sup>90</sup>

Asylum seekers who lodge an appeal against a negative decision on their asylum application are allowed to remain on the national territory and have access to accommodation only in case they are not allowed to work or their physical condition prevents them from working<sup>91</sup>.

The Italian legal framework does not foresee any particular reception system for Dublin cases<sup>92</sup>. Two scenarios should be distinguished: the first scenario concerns persons whose application has to be examined by another Member State waiting for their transfer. Since the Italian law does not establish

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<sup>84</sup> Art. 20 of the Legislative Decree No. 25/2008.

<sup>85</sup> The CPSA were created in 2006 so that the first identification and emergency aid can be conducted before persons are transferred to other types of centres.

<sup>86</sup> Art 5 (5),(6) of the Legislative Decree N.140 on reception conditions.

<sup>87</sup> Art. 20 of the Legislative Decree N. 25/2008.

<sup>88</sup> Art. 20 of the Legislative Decree N. 25/2008.

<sup>89</sup> Art. 11 (1) of the Legislative Decree N.140 on reception conditions.

<sup>90</sup> Art 11(4), *ibidem*

<sup>91</sup> Art. 5(7) of the Legislative Decree No. 140/2005.

<sup>92</sup> CIR, Forum Réfugiés –Cosi- Hungarian Helsinki Committee and the European Council on Refugees and Exiles *Dublin II Regulation – National report on Italy*, page 47.

that persons who are waiting to be transferred to another Member State on the basis of the Dublin II Regulation have to be detained, international protection seekers who received transfer orders are accommodated within the reception centres (CARAs or SPRAR projects) described above on the same conditions as the other asylum seekers.<sup>93</sup>

The second scenario refers to Dublin Returnees - persons who were issued transfer orders from other Member States and, as a consequence, were sent back to Italy. Within this broader category, another distinction is deemed necessary depending on whether the returnee had already enjoyed the reception system while they were in Italy or not. If returnees (asylum seekers, beneficiaries of international protection or of a permit of stay for humanitarian reasons) had not been placed in reception facilities while they were in Italy, they may still enter reception centres. Due to the lack of available places in reception structures and to the fragmentation of the reception system, the length of time necessary to find again availability in the centres is – in most of the cases - too long. Since, there is no general practice, it is not possible to evaluate the time necessary to access an accommodation. In the last years, temporary reception systems have been established to house persons transferred to Italy on the basis of the Dublin II Regulation. However, it concerns a form of temporary reception that lasts until their juridical situation is defined or, in case they belong to vulnerable categories, an alternative facility is found.

Such temporary reception has been set up thanks to targeted projects funded by the European Refugee Fund. For instance, in Rome, there are currently projects providing assistance to 200 persons – within this broader category 60 places are for vulnerable categories.

However, it happens that Dublin returnees are not accommodated and find alternative forms of accommodation such as self-organized settlements.<sup>94</sup> If returnees, who have already been granted a form of protection, had already enjoyed the reception system when they were in Italy, they have no more right to be accommodated in CARAs. However, they may be accommodated in these centres in case places are available to allow them to restart the administrative procedure to obtain a permit of stay.

## 2. Forms and levels of material reception conditions

### Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros): N/A

By law, the request of accommodation is transmitted by the Questura (Immigration Office of the Police) to the competent Prefecture, which verifies the availability of places in the SPRAR (System of protection for asylum seekers and refugees). If there is no place in the SPRAR system, the Prefecture can refer the asylum seekers also to the CARAs (Accommodation centres for Asylum Seekers).

If there is no place also in the CARAs, the Prefecture should grant a financial allowance<sup>95</sup> only during the period needed to find a place in an accommodation centre. The financial allowance is granted in two tranches: the first tranche is of 557.80 euros (27.89 per day) covering the first 20 days; the second one of 418.35 euros covering the following 15 days<sup>96</sup>. Nevertheless, in practice this provision has never been applied.

Generally, first accommodation centres (CDA, CPSA, CARA) offer basic services compared to those offered by second accommodation structures (SPRAR).

<sup>93</sup> Ibidem

<sup>94</sup> Pro Asyl (eds. Bethke M. & Bender D.), *The living conditions of refugees in Italy*, 2011, p. 23.

<sup>95</sup> Art. 6 (7) of the legislative Decree 140/2005.

<sup>96</sup> M. Benvenuti, *ibidem*.

The first accommodation centres are big buildings where high numbers of migrants are accommodated. These centres offer basic services (food, accommodation, clothing, basic information services including legal services, first aid and emergency treatments) and they are often overcrowded. Most of the CARAs are located in remote areas with few means of public transports available.

Concerning the SPRAR centres, these structures are run by the regions, in cooperation with the provinces and municipalities and together with civil society actors like NGOs. According to the Presidential Decree N.303/2004, the accommodation centres ensure interpreting and linguistic-cultural mediation services, legal counselling, health assistance, socio-psychological support in particular to vulnerable persons, counselling on the services available at local level to allow integration locally, information on (assisted) voluntary return programmes, as well as information on recreational, sport and cultural activities.<sup>97</sup>

The law provides that asylum seekers should have the possibility to communicate with family members, lawyers, representatives of NGOs and of the UNHCR.<sup>98</sup>

Concerning the places available in the reception centres, the CARAs accommodate about 3.800 people and the SPRAR (System of Protection for Asylum Seekers and Refugees) centres offer only 3.000 places. The places available are largely insufficient to meet the need (i.e. 34.120 requests were registered in 2011).

Accommodation centres are often overcrowded: it may happen that about 2000 people can be accommodated in one CARA, like the CARA in Crotone, creating huge problems in managing these centres. Generally speaking, private companies run accommodation centres and tend to offer low standard services because they are profit oriented.

It may happen that asylum seekers have no access to reception centres nor to the financial allowance. In these cases they are obliged to live in self-organized settlements that have flourished in metropolitan areas. These self-organized settlements are usually overcrowded, have very bad living conditions and are not integrated in the society<sup>99</sup>.

By law asylum seekers may remain in CARAs from 20 to 35 days and in SPRAR centres for 6 months. In reality, they stay in the centres for several months: the average stay in CARA is about 8 to 10 months and in SPRAR, asylum seekers can stay 6 to 12 months, particularly in cases of vulnerable persons. This prolonged stay is due to the fact that, according to article 6 of the Legislative Decree no. 140/2005 (Reception Decree), asylum seekers without means of support may continue to be accommodated in CARA centres even beyond the envisaged 35 days, in case it is ascertained that no places are available in the municipality services (SPRAR).

It must be said that the access to the reception system is not immediate since it occurs only after the formal registration of the asylum request – that takes place very often after several months with respect to the “*fotosegnalamento*”. While waiting for the formal registration, above all in the metropolitan areas, the asylum seekers find themselves without any accommodation<sup>100</sup>. It also happens that asylum seekers who should be accommodated in CARAs are provided with the so-called “*attestato nominativo*” (an identification paper in which is reported the specific article of the law on the basis of which the person is referred to CARA) and once in CARA they make the *verbalization*.

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<sup>97</sup> See also art. 40 of the TU 286/98.

<sup>98</sup> Art. 9 of the Legislative Decree 140/2005.

<sup>99</sup> See Caritas, Mediazioni Metropolitane – *Studio e sperimentazione di un modello di dialogo e intervento a favore dei richiedenti e titolari di protezione internazionale in situazione di marginalità* (Study and testing of a model of dialogue and intervention in favour of the applicants and beneficiaries of international protection in situations of marginality), June 2012.

<sup>100</sup> CIR, Forum Réfugiés –Così- Hungarian Helsinki Committee and the European Council on Refugees and Exiles *Dublin II Regulation – National report on Italy*, page 40.

Moreover, in practice the Questura often does not transmit the official request for accommodation to the Prefecture on behalf of the asylum seeker as set by the law. This lack of transmission leads to a lack of access to the right to reception of the asylum seekers.

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals):
  - o 773 in CSPA and 360 in CDA (first arrivals);
  - o 3747 in CARA centres;
  - o 3000 in SPRAR system
  - o North Africa emergency centres: a special system to receive about 19.000 North African migrants and asylum seekers was organised and managed by the National civil protection system.
- Number of places in private accommodation: Not available
- Number of reception centres: 3 CSPA, 1 CDA, 8 CARA; 151 SPRAR centres
- Are there any problems of overcrowding in the reception centres? ☒ Yes ☐ No
- What is, if available, the average length of stay of asylum seekers in the reception centres?  
8/10 months
- Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

The total capacity of regular accommodation places in Italy is approximately 5.000 places<sup>101</sup>.

According to the data published on the website<sup>102</sup> of the Ministry of Interior, in 2012 the accommodation capacity for asylum seekers was:

- 773 places in 3 CSPA (Centre for first assistance and reception) and 360 in 1 CDA (first arrival reception centres);
- 3.747 in 8 CARA (Accommodation centres for Asylum Seekers) centres (short term accommodation centres);
- 3.000 in 151 SPRAR (System of protection for Asylum Seekers and Refugees) centres (longer term accommodation centres) out of which 500 for vulnerable persons (450 for vulnerable persons and 50 for vulnerable persons with mental disabilities; 134 specifically for unaccompanied children)<sup>103</sup>;
- North Africa emergency centres: 19.000 non-Libyan migrants coming from North Africa have been placed in temporary shelters organised and managed by the National civil protection<sup>104</sup>.

It is worth noting that the total capacity at CARA centres can be up to 4.102<sup>105</sup>. Asylum seekers are often kept in CARAs for extended periods of time, as opposed to being transferred to a SPRAR project after the completion of identification procedures as originally intended due to lack of places.

The Ministry of Interior Decree of 21 November 2008 defines common minimum standards for CARAs at the national level, which are included in all contracts for the management of these reception facilities, services. The CARA centres can be managed by public local entities and other public or private bodies specialised in the assistance of asylum seekers, through ad hoc agreements valid for a period of 3

<sup>101</sup> UNHCR Recommendations on Important aspects on Refugee Protection in Italy, July 2012.

<sup>102</sup> See the [webpage](#) of the Ministry's website on Immigration Centres

<sup>103</sup> See the description of the SPRAR on their [website](#)

<sup>104</sup> See the description of the emergency system on the [website](#) of the Ministry for Civil Protection

<sup>105</sup> Comments by the Italian authorities on the Commissioner for Human Rights Report on Italy, 18 September 2012.

years.<sup>106</sup> In practice, however, these accommodation centres are managed by private companies or consortium of social cooperatives and consortium of social enterprises.

CARAs do not all offer the same reception services. Their quality of assistance<sup>107</sup> varies between facilities and sometimes failing to meet adequate standards, especially regarding the provision of legal and psycho-social assistance; identification, referral and care provided to vulnerable individuals is often inadequate due to low levels of coordination among stakeholders, an inability to provide adequate legal and social support as well as the necessary logistical follow-up<sup>108</sup>. Finally, the monitoring of reception conditions by the relevant authorities is generally not systematic and complaints often remain unaddressed<sup>109</sup>.

SPRAR centres, funded by the Ministry of Interior - Department of Civil Liberties and Immigration, are managed by local authorities through the National Association of Italian Municipalities in cooperation with NGOs. They offer several services aiming at integrating asylum seekers and refugees in the Italian society. In general, as noted by the Council of Europe's Commissioner Nils Muižnieks, "in contrast to CARAs and emergency reception centres, which tend to be big institutions hosting significant numbers of persons at one time, the SPRAR is composed of approximately 150 smaller-scale projects [...] and it also seeks to provide information, assistance, support and guidance to beneficiaries to facilitate socio-economic inclusion. [...] SPRAR reception facilities are less homogeneous and accommodation is generally foreseen in small to medium-sized facilities such as flats where services are geared towards facilitating local integration"<sup>110</sup>.

The law provides that accommodation is provided taking into consideration the special needs of asylum seekers and their family members in particular of vulnerable persons such as children, disabled persons, elderly people, pregnant women, single parents with children, when, after assessment, asylum seekers have been considered victims of torture, rape, or any other form of psychological, mental and sexual violence.<sup>111</sup>

In SPRAR centres special services for vulnerable persons are available but are very limited considering the number of places available. The managers of the accommodation centres should respect the family unity principle, therefore they cannot separate children from parents who live in the same wing of the accommodation structure. In practice it may happen that a father is accommodated in a wing for single men and his wife and children in the wing for women. In general, dedicated wings are designed for single parents with children.

Managers tend to avoid accommodating together people of the same nationality but belonging to different ethnicities, religion, or political groups that may be in conflict in order to prevent of the rise of tensions and violence.

By law the reception of unaccompanied children is ensured by the local public entities (Municipalities) on the basis of a decision taken by the juvenile Court. Unaccompanied children cannot be held in CARAs. Usually, unaccompanied children are accommodated in SPRAR centres. In case places in SPRAR centres are not available, unaccompanied children are placed in specialised centres for children.

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<sup>106</sup> Regulated by the Presidential Decree 303/2004.

<sup>107</sup> UNHCR Recommendations on Important aspects on Refugee Protection in Italy, July 2012, page 12.

<sup>108</sup> CIR et al., *Maieutics handbook – Elaborating a common interdisciplinary working methodology (legal-psychological) to guarantee the recognition of the proper international protection status to victims of torture and violence*, December 2012.

<sup>109</sup> UNHCR Recommendations on Important aspects on Refugee Protection in Italy, July 2012, page 12.

<sup>110</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012, Comm DH (2012)26, 18 September 2012.

<sup>111</sup> Art 8 of the Legislative Decree 140/2005.

In practice, due to time constraint and difficulties in finding interpreters and linguistic-cultural mediation, children are not always identified as such soon after arrival. Therefore, they can be transferred to CARA as “adults”. When an asylum seeker indicates that they are a child, the manager of the centre immediately informs the competent authorities of their presence. An age assessment follows and if the person is recognised to be a child, then they are transferred to a SPRAR centre or, in case no place is available, to a specialised centre for children.

UNHCR has raised concerns with regard to the fact that when significant numbers of arrivals take place, CDAs, CARAs and SPRAR projects alone are unable to host all asylum seekers who cannot provide for themselves<sup>112</sup>. Accordingly Italian authorities in order to face large scale influx of migrants, are obliged to adopt emergency reception measures.

The Council of Europe’s Commissioner also wrote that: “The inconsistency of the standards in reception centres, as well as the lack of clarity in the regime applicable to the migrants kept in them, became a major concern following the declaration of the “North African emergency” in 2011. Under the emergency plan, the existing reception capacity was enhanced in co-operation with Italian regions in order to deal with the sharp increase in arrivals from the coasts of North Africa (34.120 asylum applications were submitted in Italy in 2011).”<sup>113</sup>

In this regard the central government and public local authorities (regions, provinces and municipalities) adopted a plan for the reception of up to 50.000 of people foreseeing their distribution across the Italian territory on the basis of regional quotas. The head of the Department of Civil Protection was designated to manage this “*Migrant reception plan*”.<sup>114</sup> The UNHCR reported that “as of today, over 20.000 forced migrants have been hosted in the frame of the mentioned Plan, mostly in small to medium-sized facilities spread out throughout Italy”<sup>115</sup>.

However, the Council of Europe’s Commissioner stated that “the efficiency and viability of an emergency-based approach to asylum and immigration is questionable”<sup>116</sup>, urging that legal aid, adequate care and psychosocial assistance should be ensured in the emergency reception centres. The Commissioner also expressed concern about the “speedy identification of vulnerable persons and the preservation of family unity during transfers”<sup>117</sup>.

In general, concerns have been raised about the high variability in the standards of reception centres in practice, which may manifest itself in, for example: a numerical shortage and a lack of adequate training of staff; overcrowding and limitations in the space available for assistance, legal advice and socialisation; physical inadequacy of the facilities and their remoteness from the community; or difficulties in accessing appropriate information<sup>118</sup>.

The issue of the inadequate living conditions of asylum seekers in Italy has gained an increasing attention by other EU Member States, due to the relevant number of appeals filed by asylum seekers against the transfer towards Italy on the basis of the Dublin Regulation.<sup>119</sup> As emphasized by the Commissioner for Human Rights of the Council of Europe in its report on Italy, “a number of judgements by different administrative courts in Germany have suspended such transfers, owing notably to the risk of homelessness and a life below minimum subsistence standards”<sup>120</sup>.

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<sup>112</sup> UNHCR Recommendations on Important Aspects on Refugee Protection in Italy, July 2012.

<sup>113</sup> Report by Nils Muiznieks, *op.cit.*, at p. 28

<sup>114</sup> UNHCR Recommendations on Important Aspects on Refugee Protection in Italy, July 2012.

<sup>115</sup> *Ibidem*.

<sup>116</sup> Same concern was expressed also by the Commissioner for Human Rights of the Council of Europe in its last report on Italy, Nils Muiznieks, *op.cit.*, at p. 28.

<sup>117</sup> *Ibidem*, at p. 28.

<sup>118</sup> Report by Nils Muiznieks, *op.cit.*.

<sup>119</sup> *Ibidem*, at p. 29.

<sup>120</sup> *Ibidem*, at p. 29.



On the contrary, a recent decision on the admissibility of a case of the European Court of Human Rights affirmed that the general condition of asylum seekers in Italy does not present systematic gaps infringing fundamental rights<sup>121</sup>.

#### 4. Reduction or withdrawal of reception conditions

*Indicators:*

- Does the legislation provide for the possibility to reduce material reception conditions?  
☐ Yes      ☒ No
- Does the legislation provide for the possibility to withdraw material reception conditions?  
☒ Yes      ☐ No

By law, the Prefect of the Province, where the accommodation centre is placed, can decide with a motivated decision to revoke the material reception on the following grounds:<sup>122</sup>

- a) the asylum seekers did not present themselves at the assigned centre or they left the centre without notifying the competent Prefecture;
- b) the asylum seekers did not present themselves before the determining authorities for the personal interview even though they were notified thereof;
- c) the asylum seeker has previously lodged an asylum application in Italy;
- d) the authorities decide that the asylum seekers possess sufficient financial resources;
- e) serious violation or continuous violation of the accommodation centre's internal rules or where the asylum seeker's conduct was considered seriously violent.

According to Legislative Decree No. 140/2005, when the asylum seeker fails to present themselves to the assigned centre or leaves the centre without informing the authorities, the centre managers must immediately inform the competent Prefecture<sup>123</sup>. In case the asylum seeker spontaneously present themselves before the police authorities or at the accommodation centre, the Prefect may decide to readmit the asylum seeker to the centre if the reasons provided are due to force majeure or unforeseen circumstances.

By law, asylum seekers may lodge an appeal before the Administrative Regional Tribunal (TAR) against the decision of the Prefect to withdraw material reception conditions<sup>124</sup>.

In practice appeals are rarely lodged mainly due to the fact that asylum seekers who do not present themselves at the centres or leave the centres after their arrival, usually left in order to enter other EU countries.

#### 5. Access to reception centres by third parties

*Indicators:*

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
☐ Yes      ☒ with limitations      ☐ No

<sup>121</sup> European Court of Human Rights, *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, Application no. 27725/10, 2 April 2013.

<sup>122</sup> Art. 12 of Legislative Decree 140/2005.

<sup>123</sup> Art. 12(2) of the Legislative Decree No. 140/2005.

<sup>124</sup> Art. 12(4) of the Legislative Decree No. 140/2005.

The law provides that UNHCR, lawyers and experienced refugee assisting NGOs, previously authorised by the Ministry of Interior, are allowed to enter CARAs (Accommodation Centres for Asylum Seekers).<sup>125</sup> The Prefect establishes rules on modalities and the time scheduled for visits by UNHCR, lawyers, NGOs as well as the asylum seekers' family members and Italian citizens who must be authorised by the competent Prefecture on the basis of a previous request made by the asylum applicant living in the centre.<sup>126</sup> The Prefecture notifies these decisions to the managers of the centres.

The law states that the Prefect may refuse the entrance of NGOs to CARA centre for motivated reasons, but those are not laid down by law.<sup>127</sup> In practice it happened that some NGOs and some lawyers were not authorised to enter CARA.

It is worth noting that these centres are open, therefore asylum seekers are free to contact NGOs, lawyers and UNHCR offices outside of the centres.

## 6. Addressing special reception needs of vulnerable persons

### *Indicators:*

- Is there an assessment of special reception needs of vulnerable persons in practice? ☐ Yes ☒ No

Art. 8(1) of the Legislative Decree 140/2005 provides that the accommodation is provided taking into account the special needs of the asylum seekers and their family members, in particular those of vulnerable persons such as children, disabled persons, elderly people, pregnant women, single parents with minor children, persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence.

There are no legal provisions of how, when and by whom this assessment should be carried out. However, art. 8(2) of the Legislative Decree 140/2005 provides that the managers of reception centres, where possible, set up special accommodation services, in cooperation with the local public health centres to provide adequate psychological support in order to address the special needs of asylum seekers.

In addition, in SPRAR (System of protection for asylum seekers and refugees) centres special reception measures should be set up to meet the specific needs of asylum seekers.<sup>128</sup> The assessment of special needs is conducted upon placement of asylum seekers at one of the accommodation centres. This assessment is not carried out systematically and it depends upon the existence and the quality of services provided by the centre, the availability of funds and their use by the managers of the centres.

In practice it may happen that torture victims remain in a CARA (Accommodation centres for Asylum Seekers) without any possibility to be transferred to a SPRAR centre due to lack of availability of places in ad hoc reception centres.

It may also happen that unaccompanied children may be initially placed in a CARA because they were wrongly identified as adults after arrival at the borders. Where an age assessment authorised by a competent judge reveals that the person concerned is in fact a child they are transferred to SPRAR centres.

However, if there are no places available in SPRAR centres they are transferred to other shelters for unaccompanied children which may not provide the same standards ensured by SPRAR centres.

<sup>125</sup> Art. 12 of Legislative Decree 140/2005

<sup>126</sup> Art. 8 of the DPR 303/2004

<sup>127</sup> Art. 11 of the Presidential Decree 303/2004

<sup>128</sup> Art. 8(2) of the Legislative Decree 140/2005

## 7. Provision of information

By law, upon submitting an asylum application, police authorities have to inform applicants through a written brochure about their rights and obligations and the relevant timeframes applicable during asylum procedures.<sup>129</sup> The brochure also includes information on health services and on the reception system, and on the modalities to access to these services. In addition, it contains the contact details of UNHCR and other specialised refugee-assisting NGOs.

This provision, unlike art. 5 of the Reception Directive, does not explicitly foresee that information shall be provided orally. However, in practice the distribution of these leaflets written in 10 languages is actually quite rare at the police stations. Although it is not foreseen by law, the information is orally provided by police officers but not in a systematic way mainly due to the shortage of professional interpreters and linguistic mediators. The gaps in providing information is of concerns to NGOs as it is considered necessary that asylum seekers receive information orally, taking into consideration their habits, cultural backgrounds and level of education which may constitute obstacles in effectively understanding the contents of the leaflets.

Upon arrival in the reception centres, asylum seekers are informed on the benefits and level of material reception conditions. Depending of the type of centre (SPRAR facilities, CARAs, ) and the rules adopted by the managers of the accommodation centres, asylum seekers may benefit from proper information of the asylum procedure, the access to labour market or any other information on their integration rights and opportunities. Generally speaking, leaflets are distributed in the accommodation centres and asylum seekers are informed orally through the assistance of interpreters.

## 8. Freedom of movement

According to the law, the competent Prefect may limit the freedom of movement of asylum seekers, delimiting a specific place of residence or a geographic area where asylum seekers may circulate freely.<sup>130</sup> In practice, this provision has never been applied so far.

## B. Employment and education

### 1. Access to the labour market

#### Indicators:

- Does the legislation allow for access to the labour market for asylum seekers? ☒ Yes ☐ No
- If applicable, what is the time limit after which asylum seekers can access the labour market 6 months from the asylum request
- Are there restrictions to access employment in practice ? ☒ Yes ☐ No

The law provides that asylum seekers have the right to work in case a decision has not been taken by the determining authorities within 6 months from the presentation of the asylum request, unless the delay is due to the conduct of the asylum seeker.<sup>131</sup> To that effect, they are granted a new temporary residence permit that allows them to work. The residence permit is valid for 6 months and is renewed until the end of the asylum procedure.

<sup>129</sup> Article 10(1) of the Legislative Decree 25/2008 on asylum procedures

<sup>130</sup> Art. 7(1) of the Legislative Decree 159/2008, amending Legislative Decree 25/2008 on asylum procedure

<sup>131</sup> Art 11 of the Legislative Decree 140/2005,

In addition, the law states that asylum seekers living in accommodation centres may attend vocational training when envisaged in programmes eventually adopted by the public local entities.

The same provisions apply to asylum seekers who have lodged an appeal.<sup>132</sup>

This stay permit cannot be converted in a work stay permit: their permit of stay continues to be a permit of stay for international protection reasons but allows them to work.

Even though the law makes a generic reference to the right to access to employment without indicating any limitations, in practice, asylum seekers face difficulties in finding a job due to the current financial crisis affecting Italy, the language barrier, and the remote location of the accommodation.

## 2. Access to education

### Indicators:

- Does the legislation provide for access to education for asylum seeking children? ☒ Yes ☐ No
- Are children able to access education in practice? ☒ Yes ☐ No

By law, asylum seeking unaccompanied children and children of asylum seekers have the right and the obligation (until 16 years old) to take part in the national education system within maximum three months from the asylum application.<sup>133</sup>

Art 10 of Legislative Decree 140/2005 makes reference to art. 38 of the Consolidated Act on Immigration No. 286/98 which states that foreign children present in the Italian territory are subject to the compulsory education, emphasising that all provisions concerning the right to education and the access to education services apply to foreign children as well.

This principle has been further clarified by article 45 of the Presidential Decree 394/1999 which gives equal rights to education to foreigner children, even in an irregular situation, as to Italian children. Asylum seeking children have access to the same public schools as Italian citizens.

In practice, the main issues concerning school enrolment are:

- the reluctance of some schools to enrol a high number of foreign students;
- the refusal from the family members and/or the child to attend classes;
- insufficient places available in schools located near the accommodation centres and the consequent difficulty to reach the schools if the centres are placed in remote areas.

## C. Health care

### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
☒ Yes ☐ No
- In practice, do asylum seekers have adequate access to health care?  
☒ Yes ☐ with limitations ☐ No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
☒ Yes ☐ No

<sup>132</sup> Art. 36(1) of the legislative Decree 25/2008 on asylum procedures.

<sup>133</sup> Art. 10(2) of the Legislative Decree No. 140/2005 on reception conditions.

By law<sup>134</sup>, asylum seekers and beneficiaries of international protection must enrol in the National Health Service. They have equal treatment and full equality of rights and obligations with respect to Italian citizens regarding the obligation contributory assistance provided by the national health service in Italy.

According to article 35 of legislative decree No. 286/98 (Consolidated Text on Immigration), irregular migrants are entitled to treatment in public health care facilities for emergency and essential treatments because of illness or accident. They also benefit from preventive medical treatment programmes aimed at safeguarding individual and collective health.<sup>135</sup> Therefore, they are entitled to the same health care as nationals<sup>136</sup>.

The right to medical assistance is acquired at the moment of the registration of the asylum request and this right remains even in the process of the renewal of the permit of stay<sup>137</sup>. The medical assistance is extended automatically to each family member under the applicant's care regularly resident in Italy and is recognized immediately for new born babies of parents registered with the National Health System<sup>138</sup>.

The law prescribes that asylum seekers are obliged to register with the National Health System in the offices of the local health board (ASL)<sup>139</sup>. Asylum seekers housed in accommodation centres are registered directly by the manager of the centre<sup>140</sup>. The documents necessary for registration are the permit of stay, the registration in the civil status registry and the fiscal code<sup>141</sup>. Once registered, a temporary health card (*tessera sanitaria*) is delivered to the asylum seeker.

The registration allows the asylum seeker to be entitled to the following health services:

- the free choice of a general doctor from the list presented by the ASL and the choice of a pediatrician for children (free medical visits, home visits, prescriptions, certification for access to nursery and maternal schools, obligatory primary, media and secondary schools);
- special medical assistance through a general doctor or pediatrician's request and on presentation of the health card;
- midwifery and gynecological visits at the "family counseling" (*consultorio familiare*) to which access is direct and does not require doctors' request;
- free hospitalisation in public hospitals and some private subsidised structures.

Asylum seekers and beneficiaries of international protection benefit from free of charge health services on the basis of a self-declaration of destitution. The request of ticket exemption is presented to the competent ASL. Usually asylum seekers are helped by the social assistance of their centre in filling in the request.

The medical ticket exemption is due to the fact that asylum seekers are treated under the same rules as unemployed Italian citizens<sup>142</sup>. With the Legislative Decree No. 140/2005 coming into effect and authorising asylum seekers to work, the ticket exemption is valid at least for sixth month since the asylum request, when a permit of stay valid for work is then issued to the asylum seeker. After that, the asylum seeker need to register in the registry of the job centres (*centri per l'impiego*) attesting their unemployment in order to maintain the ticket exemption.

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<sup>134</sup> Art. 34 of Legislative Decree No. 286/98 (Consolidated Text on immigration). See also article 27 of the Legislative Decree No. 251/2007, which refers exclusively to beneficiaries of international protection.

<sup>135</sup> Art. 35 of Legislative Decree No. 286/98 (Consolidated Text on immigration).

<sup>136</sup> Article 34 (1) of the TU 286/98.

<sup>137</sup> SPRAR, *Guida pratica per i titolari di protezione internazionale - Istruzioni per l'uso dei servizi sul territorio* (Practical guide for the beneficiaries of international protection – Instruction for the use of services on the territory), 2003, page 107.

<sup>138</sup> SPRAR, *ibidem*.

<sup>139</sup> Art. 10(1) of the Legislative Decree 140/2005, which makes reference to art 34 (1) of the TU 286/98.

<sup>140</sup> Art. 10(1) of the Legislative Decree No. 140/2005.

<sup>141</sup> SPRAR, *ibidem*.

<sup>142</sup> See Ministry of Health Circular No. 5, 24/03/2000.

In practice, as the Council of Europe's Commissioner for Human Rights, Niels Muižnieks noted in his report "asylum seekers have severe difficulties accessing health services due to administrative hurdles, despite many persons having serious health problems, including mental health problems caused by the trauma of war and their arduous journey to Italy"<sup>143</sup>.

Asylum seekers suffering mental health problems, including torture survivors, are entitled to the same right to access to health treatment as provided for nationals by the Italian legislation. In practice, they may benefit from specialised services provided by the National Health System and by specialised NGOs or private entities.

In this regard, it is worth noting that in 2007, the National Commission for the Right of Asylum, UNHCR, the Italian Refugee Council and the Centre for the study and the treatment of post-traumatic and stress pathologies of the San Giovanni Hospital in Rome have established NIRAST (Italian Network for Asylum Seekers who Survived Torture), which takes in charge asylum seekers victims of torture and extreme violence providing them with services of rehabilitation and specialised medical and psychological care. On 1<sup>st</sup> March 2012 the NIRAST had to close because of lack of funds but hopefully will be reopened soon.

Regarding the effective enjoyment of the health services by asylum seekers and refugees, it is worth noting that there is a general disinformation and a lack of specific training on international protection for medical operators<sup>144</sup>. In addition, the medical operators are not specifically trained on the diseases typically affecting asylum seekers and refugees, which are very different from the diseases affecting Italian population<sup>145</sup>.

One of the most relevant obstacles to access health services is the language: usually medical operators speak only Italian and there are no cultural mediators or interpreters who could facilitate the mutual understanding<sup>146</sup>. Therefore asylum seekers and refugees often do not address their general doctor and go to the hospital only when their disease gets worse. These problems are worsening because of the severe conditions of the accommodation centres and of the informal accommodation in the metropolitan areas<sup>147</sup>.

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<sup>143</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Italy from 3 to 6 July 2012, CommDH(2012)26, 18 September 2012.

<sup>144</sup> See M. Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011, page 263.

<sup>145</sup> See CIR, *Le strade dell'integrazione – Ricerca sperimentale quali-quantitativa sul livello di integrazione dei titolari di protezione internazionale presenti in Italia da almeno tre anni (The streets of integration - Experimental research on the qualitative and quantitative level of integration of beneficiaries of international protection present in Italy for at least three years)*, June 2012.

<sup>146</sup> See CIR, *ibidem*.

<sup>147</sup> See CIR, *ibidem*.

## Detention of Asylum Seekers

### A. General

#### Indicators:

- Number of asylum seekers who entered detention in the previous year: 120
- Number of asylum seekers detained or an estimation at the end of the previous year:  
In 2012, 7.944 migrants, out of which 120 asylum seekers, have been held in CIEs.
- Number of detention centres: 13 CIEs, out of which 3 closed in 2012.
- Total capacity: theoretical 1.911, effective 1.190.

According to the statistics provided by the Ministry of Interior in the Programmatic Document on the Centres for Identification and Expulsion issued in April 2013, the Centres for identification and Expulsion are<sup>148</sup>:

Name	Theoretical capacity	Effective capacity	Detainees in Feb 2013
Bari	196	112	111
Bologna	95	75	53
Brindisi	Closed on 29/05/2012		
Caltanissetta	96	96	11
Catanzaro	Closed on 09/11/2012		
Crotone	124	62	50
Gorizia	248	74	73
Milano	132	76	60
Modena	60	50	49
Roma	360	316	122
Torino	210	131	95
Trapani Milo	204	198	116
Trapani Serraino Vulpitta	Closed on 25/06/2012		

According to the report of *Medici per i diritti umani*<sup>149</sup> (Doctors for Human Rights), in 2011, 7.735 migrants, out of which 200 asylum seekers, have been held in 15 Centres of Identification and Expulsion. Out of 15 centres, 12 are permanent centres (Bari; Bologna; Brindisi; Caltanissetta; Catanzaro; Gorizia; Milano; Modena; Roma; Torino; Trapani-Serraino Vulpitta; Trapani-Milo) and 3 temporary facilities (Santa Maria Capua Vetere, Palazzo San Gervasio, Trapani Kinisia), created in 2011 in order to face the North Africa Emergency. In 2012, 7944 migrants were detained in the Italian CIEs, out of which 120 asylum seekers<sup>150</sup>.

<sup>148</sup> Ministry of Interior, [Programmatic Document on the Centres for Identification and Expulsion](#), April 2013 (in Italian)

<sup>149</sup> Medici per i diritti umani, [L'iniquo ingranaggio dei CIE](#). Breve analisi dei dati nazionali completi del 2011 sui centri di identificazione e di espulsione (Doctors for human rights, *The unequal mechanism of CIEs. Brief analysis of 2011 national data on centres for identification and expulsion*), July 2012.

<sup>150</sup> Medici per i diritti umani, [Summary of the situation of people detained in the Centres for Identification and Expulsions](#), Comparative table 2011-2012

## B. Grounds for detention

### Indicators:

- In practice, are asylum seekers automatically detained
  - o on the territory: ☐ Yes ☒ No
  - o at the border: ☐ Yes ☒ No
- Are asylum seekers detained in practice during the Dublin procedure? ☐ Yes ☒ No
- Are asylum seekers ever detained during a regular procedure? ☒ Yes ☐ No
- Are unaccompanied asylum-seeking children ever detained?  
☐ Yes ☐ Yes, but only in border/transit zones ☒ No
- Are asylum seeking children in families ever detained?  
☐ Yes ☐ Yes, but rarely ☒ No
- What is the maximum detention period set in the legislation (inc extensions): 18 months
- In practice, how long in average are asylum seekers detained? 38 days

The law prohibits the detention of asylum seekers for the only purpose of examining their asylum request.<sup>151</sup> The law sets the grounds for the detention of asylum seekers.<sup>152</sup> It states that the chief of the *Questura* (Immigration Office of the Police) can detain an asylum seeker:

- a) who falls under the exclusion clauses laid down in art. 1F of the 1951 Geneva Convention;
- b) who has been convicted for one of the crimes listed in article 380 (1) and (2) of the code of penal procedure - for which is a 5 years detention sentence is envisaged - as well as for crimes related to drug trafficking, smuggling of migrants towards Italy and from Italy towards other countries, recruitment of persons into prostitution and sexual exploitation, employment of children in illegal activities;
- c) who has been notified with an expulsion or expulsion from the borders order.

If a person applies for asylum while already in detention following an expulsion order, they will remain in detention during the examination of their claim, as the legislation does not provide for the possibility to be transferred to a reception centre. In these cases, the asylum requests are examined under the prioritised procedure.

Article 26(6) of the Legislative Decree explicitly provides that unaccompanied children can never be held in the detention centres (CIEs), whereas the legislation is silent with regard to other vulnerable categories. Vulnerable persons may be detained in CIE and there are no provisions concerning the legal guarantees that should be applied when victims of torture or violence are identified in detention in order to transfer them to adequate reception centres and benefit from specific treatments (medical, psychological, etc..).

Detention of children in families is not prohibited: children can be detained together with their parents if they request it and if decided by a Juvenile Judge. In practice very few children are detained.

By law, detention can be extended up to 18 months.<sup>153</sup> It used to be limited to 6 months before the amendments of the law in 2011. In practice, according to the Ministry of Interior, the average length of stay is 38 days. However, the actual length of detention may be longer since, for migrants with a return order, it depends on the cooperation to organise their between the Italian Government and the authorities of their country of origin.<sup>154</sup>

<sup>151</sup> Article 20(1) of the Legislative Decree 25/2008 on asylum procedures

<sup>152</sup> Article 21 of the Legislative Decree 25/2008 on asylum procedures

<sup>153</sup> According to Art. 21(2) of the legislative Decree n. 25/2008, the chief of the *Questura* orders the detention of asylum seekers in line with the rules set out in the TU 286/98 modified by the Law 129/2011

<sup>154</sup> Ministry of Interior in the Programmatic Document on the Centres for Identification and Expulsion issued in April 2013, at p. 14



Other sources provide for different information concerning the detention time limits. In particular, the Commissioner for Human Rights of the Council of Europe has pointed out that in 2012 the average length of stay in the CIE of Ponte Galeria was three months.<sup>155</sup> The NGO *Medici per i Diritti Umani* (MEDU) reports that the length of stay depends on several factors such as the nationality of the migrants to be expelled, the effective collaboration of the countries of origin concerned in identifying and returning their citizens, and the existence of readmission agreements between Italy and third countries.<sup>156</sup> Moreover, the duration of the administrative detention also differs from one CIE to another. For instance, according to an assessment of the management body of the CIE of Ponte Galeria the length of stay in this centre varies between 4 months for Moroccan migrants and 8 days for Romanian citizens.<sup>157</sup>

Migrants detained in CIEs, may benefit from alternatives to detention in case the detained person is willing to return voluntarily if the following requirements are fulfilled:<sup>158</sup>

- no expulsion for state security and public order grounds;
- no risk of absconding;
- the person has to have a passport;
- the availability of sufficient economic resources as indicated by the law.

In this case the chief of the Questura may resort to one or more alternative measures to detention such as : a) migrants have to hand over to the police their passport that will be given back at their departure; b) they must indicate the domicile where they can be contacted; c) migrants have to report before the police authorities following the police instructions.

ASGI has underlined that in practice Italian authorities do not resort to measures alternative to the administrative detention, leading to the CIEs' overcrowding.<sup>159</sup>

On this point, the Commissioner for Human Rights of the Council of Europe in his report drafted following his visit to Italy from 3 to 6 July 2012 has encouraged the Italian authorities "to phase out administrative detention of irregular migrants in prison-like settings in favour of suitable alternatives and to promote the use of voluntary return programmes."<sup>160</sup>

MEDU emphasizes that, although, Italy has the obligation deriving from the Return Directive to resort to administrative detention of third-country nationals subjected to return procedure only as *extrema ratio* unless other sufficient but less coercive measures can be applied, however, in transposing the EU Directive the Italian legislation envisaged the enforced return as a rule and the voluntary departure as an exception.<sup>161</sup>

With regard to the typologies of individuals detained in CIEs, the Ministry of Interior does not provide specific data concerning asylum seekers. In its Programmatic Document on CIEs issued on April 2013 the Ministry of Interior refers broadly to the category of migrants.<sup>162</sup>

On this point the Council of Europe's Commissioner for Human Rights reported that, on the basis of the data provided by the CIE personnel, about 70% of the men detained were former convicts having already served their sentence. The NGO *Medici per i Diritti Umani* has declared in its report issued on

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<sup>155</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Italy from 3 to 6 July 2012, CommDH(2012)26, 18 September 2012

<sup>156</sup> *Medici per i Diritti umani, ARCIPELAGO CIE: indagine sui centri di identificazione ed espulsione italiani (Archipelgo CIE: survey of Italians identification and expulsion centres)*, May 2013, at p. 29.

<sup>157</sup> *Medici per i Diritti umani, op cit*, at p. 29.

<sup>158</sup> Art. 13 (5.2) and art. 14 ter of the TU 286/98 amended by Law 129/2011,

<sup>159</sup> ASGI, *Il Documento programmatico sui C.I.E. del Ministero dell'interno: un pessimo programma di legislatura (The Programmatic document of the Ministry of Interior: a bad legislative programme)*, 23 April 2013, p. 3

<sup>160</sup> Report by Nils Muižnieks, *op.cit.*

<sup>161</sup> *Medici per i Diritti umani, op.cit.*, at p. 32.

<sup>162</sup> Ministry of Interior, *Programmatic Document on the Centres for Identification and Expulsion*, April 2013, at p. 14.

13<sup>th</sup> May 2013<sup>163</sup> that, according to the data provided by the CIEs management bodies, the percentage of migrants previously detained for criminal charges vary from the 15-20% (in the CIEs of Bologna and Modena) up to 80-95% (in the CIEs of Trapani Milo, Lamezia Terme, and Milan). This is mainly due to the fact that migrants detained for criminal conviction who are in a situation of irregular stay in the Italian territory are often not identified in prison and thus not expelled after serving their term of imprisonment but they are transferred to the CIEs.<sup>164</sup>

Moreover, the administrative detainees generally also include irregular migrants, some having lived in Italy for considerable periods<sup>165</sup>. This has been also emphasized by ASGI<sup>166</sup>, which has stated that several migrants who are detained in the centres since they found themselves in an irregular condition after having lost their job<sup>167</sup>. For these migrants the Questura rarely provides a time limit for the voluntary departure<sup>168</sup> and no alternative measures<sup>169</sup> are provided.

### C. Detention conditions

#### Indicators:

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
- Do detainees have access to health care in practice? ☒ Yes ☐ No
- Is access to detention centres allowed to
  - o Lawyers: ☐ Yes ☒ Yes, but with some limitations ☐ No
  - o NGOs: ☐ Yes ☒ Yes, but with some limitations ☐ No
  - o UNHCR: ☐ Yes ☒ Yes, but with some limitations ☐ No

By law, asylum seekers can be detained in administrative closed structures (Identification and Expulsion Centres – CIEs) where are generally placed third country nationals who have received an expulsion order. Among them there are also former detainees<sup>170</sup> previously held in ordinary prisons.

According to the Report addressed to the Italian Government by a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, following its visit carried out in September 2008 at the Identification and Expulsion Centre located in Milan, the detention conditions are “adequate on the whole”, but “the general environment of the holding units is “distinctly austere and prison-like” and this characteristic is “exacerbated by the presence of servicemen permanently patrolling the perimeter of the CIE”.<sup>171</sup> The CPT noted that “the activities organized/on offer were minimal” and recommended “that the Italian authorities offer foreign nationals a greater number and broader range of activities (sports in particular)”.

<sup>163</sup> Medici per i Diritti umani, *op.cit.*, p. 18

<sup>164</sup> Medici per i Diritti umani, *op.cit.*, p. 22.

<sup>165</sup> Report by Nils Muižnieks *op.cit.*

<sup>166</sup> Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), *op.cit.*

<sup>167</sup> They find themselves in an irregular condition since they lost the permit of stay.

<sup>168</sup> Art. 13.5.2 and art. 14ter of the TU 286/1998 amended by law 129/2011.

<sup>169</sup> Art. 14.1 bis of the TU.

<sup>170</sup> In this category are included those who have been convicted for one of the crimes listed in article 380 (1) and (2) of the code of penal procedure - for which is a 5 years detention sentence is envisaged - as well as for crimes related to drug trafficking, smuggling of migrants towards Italy and from Italy towards other countries, recruitment of persons into prostitution and sexual exploitation, employment of children in illegal activities. But also all third-country nationals who served a sentence and then received an expulsion order.

<sup>171</sup> CPT/Inf (2010) 12,

Various reports show that in some cases, detention conditions are not in conformity with the CPT standards.<sup>172</sup> Accommodation provided is not always adequately-furnished, clean and in good state of repair. Reports indicate cases of centres characterised by serious structural deficiencies (CIE in Trapani and Lamezia Terme) or in a state of deterioration (CIE in Roma). In the majority of cases, the CIEs look like confinement centres or prisons, and are inadequate to guarantee acceptable living conditions to detained migrants.<sup>173</sup>

In detention centres, recreational activities and the means to implement them are insufficient. Moreover, it has been underlined that the shortage of recreational activities has an increased negative impact on living conditions of people staying in the CIE 24 hours a day especially after the extension of the maximum detention period up to 18 months.

In this regard, the Council of Europe's Commissioner for Human Rights expressed "deep concern" about the fact that the CIEs "have not been adapted to the extension of the maximum detention period from 2 to 18 months", making particular reference to the lack of recreational activities. Accordingly he "warned" the Italian authorities against a "further degradation of standards due to budgetary cuts".<sup>174</sup> The NGO *Medici per i Diritti Umani* (MEDU) has revealed that the serious shortage of recreational activities and places within the identification and expulsion centres is one of the main factors entailing malaise in detained migrants.<sup>175</sup>

By law access to health care is guaranteed to all detainees. The law provides as a general rule that full necessary assistance and respect of dignity shall be guaranteed to the detainees.<sup>176</sup> The legislation further states that the fundamental rights of the detainees must be guaranteed, and that inside detention centres essential health services are provided.<sup>177</sup>

The Directive of 14 April 2000 of the Ministry of the Interior on Centres of Temporary Permanence and Assistance states that, during detention, the protection of physical and mental health must be ensured and that health services shall be provided by the centre's managing body.

The competent Prefecture signs *ad hoc* agreements (*Capitolato di appalto*) with the entity in charge of ensuring the management of the centre, that are elaborated on the basis of a general model of rules<sup>178</sup> related to the functioning of the CIE and to the services that must be provided by the managing body. This general model of rules was adopted on the 21st November 2008 through a Ministerial Decree in order to harmonise the typology and the quality of services provided within all the CIEs.

According to the *Capitolato*, the following services must be guaranteed by the managing entity of the CIE, also through the contribution of NGOs or other agencies: interpretation, cultural mediation, social assistance, legal orientation, psychological support, health care.

The health care services provided must consist of:

- Medical screening carried out upon entrance of the migrants in CIEs, aiming at checking general health conditions and at identifying vulnerable cases (unaccompanied children, disabled people, victims of physical and psychological violence);
- Medical service ensured on a daily basis by a doctor assisted by nurses, present in the centre for an adequate number of hours established in consideration of the number of persons detained;

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<sup>172</sup> Doctors without borders (Medici Senza Frontiere) "*Al di là del muro (Beyond the Wall)*", January 2010.; Medici per i Diritti Umani, "*Behind Higher Fences. Report on the identification and deportation centre of Ponte Galeria in Rome*", 2012; Medici per i Diritti umani, *ARCIPELAGO CIE*, May 2013.

<sup>173</sup> Medici per i Diritti umani, *op.cit.*, p. 21.

<sup>174</sup> Report by Nils Muižnieks, *op.cit.*,

<sup>175</sup> Medici per i Diritti umani, *op.cit.*, p. 24.

<sup>176</sup> Article 14(2) of the TU n. 286/1998.

<sup>177</sup> Article 21(1) and 21(2) of the Presidential Decree 394/1999.

<sup>178</sup> Schema di capitolato di appalto per la gestione dei centri di accoglienza per immigrati.

- Moreover, in case the detained person need urgent health care, on the basis of the explicit request of the responsible doctor or, in their absence, of supervisory staff, they are conducted to the nearest public health unit.

MEDU in its recent report issued on May 2013 pointed out that the comprehensive level and quality of health services provided by the management bodies within the CIEs “do not seem to ensure adequately the right to health to the persons detained”.<sup>179</sup>

Doctors without Borders’s 2010 report, and Medici per i Diritti Umani’s 2012 report and 2013 report have emphasised some critical aspects that in practice limit the access to health services and that compromise its quality. In particular:

- the access to the health unit within the CIEs, is filtered by operators working in the centre and it is rarely done with the support of a cultural mediator;
- managing entities can only ensure first level health care assistance. For other screening and diagnostic tests, detainees are conducted to external healthcare facilities. However, access to external health care is often difficult due to: the impossibility for the personnel of the local public health unit to access the detention centre; the necessity of a police escort available for transportation; difficulties due to lack/insufficiency of cooperation between the health unit inside the CIE and the external public health unit, when CIEs do not stipulate formal protocols with the external public healthcare facilities;
- quality of health services vary considerably from one centre to another and it depends exclusively upon methods and resources used by different managing entities;
- psychological support services are present within CIEs but they are poorly structured.
- there is a lack of parameters for evaluation, indicators of quality, external checks; and the managing institution is accountable only to the Prefecture, which lacks specific expertise in health and psychological area.

With regard to the detention facilities for families and vulnerable persons, the Directive of 14 April 2000 of the Ministry of the Interior regulates the structural characteristics of the centres and establishes that separated rooms or wings should be available for women, men and families (with or without children). Family unity must be guaranteed, therefore family members should remain in the same centre and when such an arrangement is not possible in a short time, they will be transferred to another centre. According to Doctors without Borders<sup>180</sup>, and a report issued by the ad hoc commission for the protection and promotion of human rights of the Senate<sup>181</sup> (hereafter “Senate report”), separate rooms or wings for vulnerable persons, asylum seekers or others groups are not always provided in detention facilities. These reports have denounced the fact that there is in practice little attention for vulnerable persons and that migrants and asylum seekers are obliged to share the same rooms and wings with former prisoners who have committed different types of crimes. This promiscuity among detainees with heterogeneous social, legal and psychophysical conditions (ex-prisoners, asylum seekers, victims of trafficking, foreigners who lived irregularly for many years in Italy , foreigners just arrived ...) can potentially expose vulnerable persons to further abuses and makes more difficult their identification and proper assistance.

The Directive of 14 April 2000 of the Ministry of the Interior provides that the detention centres should be organized in four distinct areas: main entrance, offices, housing, common area. The outdoor spaces should be appropriately equipped for sport activities. According to the mentioned reports, the access to open-air spaces seems to be guaranteed, although in some cases with some limitations. The 2010

<sup>179</sup> Medici per i Diritti umani, *ARCIPELAGO CIE*, May 2013, p. 24.

<sup>180</sup> Doctors without Borders, *opus cite*

<sup>181</sup> Commissione straordinaria per la tutela e la promozione dei diritti umani del Senato “ *Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per migranti in Italia*”, February 2012 (Extraordinary Commission for the protection and promotion of human rights of the Senate, *Report on the status of human rights in the penitentiary institutions and in the reception and detention centres for migrants in Italy*)

CPT report pointed out that “the yard only offered partial protection against inclement weather” and “no sports or other activities were organized”.<sup>182</sup>

Concerning the access to education in CIEs, foreigner children should have access to education at the same conditions foreseen for nationals. The presence of children in detention centres has been reported in very few cases. According to Doctors without Borders, following 17 visits in CIEs in 2010, found no children in the centres.<sup>183</sup> Because of few cases of children in CIEs, no information is available regarding the obstacles to the access to education and recreational facilities in practice.

Access to detention centres is guaranteed by law, in any case, to UNHCR’s representatives, lawyers and specialised refugee assisting organisations that have been previously authorised by the Ministry of the Interior.<sup>184</sup>

In April 2011, the former Minister of Interior issued a circular letter prohibiting the access to CIEs to the media, independent organisations (with some exceptions mentioned in the letter) and of civil society to the CIEs.<sup>185</sup> This caused a strong mobilisation of NGOS and the media that led to the *LasciateCIEntrare* (Open Access Now) campaign. In December 2011, the Directive n. 11050 issued by the Ministry of Interior revoked the circular letter, specifying, nevertheless, that Prefectures can prohibit the access to CIEs not only for public order reasons, but also for safety reasons, in cases of facility’s renovation. According to the Senate’s report, in practice, difficulties concerning the authorisation to access CIEs still remain due to the excessive discretion of the Ministry of the Interior.

Within the frame of the Praesidium Project IOM, UNHCR, the Red Cross and Save the Children benefit from access to CIES. Nevertheless, these organisations are still not given full and continuous access to these centres. Moreover, other organisations find it difficult to access the centres at will. Thus, it is necessary to move beyond the project-based Praesidium initiative and establish a nation-wide institutional framework in which NGOs, international organisations, journalists and lawyers can freely access and monitor the facilities, and the implementation of recommendations is transparent and easily monitored.<sup>186</sup>

## D. Judicial Review of the detention order

### Indicators:

- Is there an automatic review of the lawfulness of detention? ☒ Yes ☐ No

The law regulates the modalities and the time frame of detention in Centres for identifications and Expulsions (CIEs) of the asylum seekers<sup>187</sup>. According to art. 21(2) of Law 25/2008 read in conjunction with art. 14.3 of the TU 286/1998, the chief of the Questura (Immigration Office of the Police) orders the detention and the decision must be validated within 48 hours by the competent judge of peace. In this regard, some legal experts have argued that these validation hearings are deeply flawed and are really a mere formality.<sup>188</sup> Moreover, contrary to similar proceedings for EU citizens, the judge deciding the

<sup>182</sup> Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 26 September 2008, CPT/Inf (2010)12

<sup>183</sup> Doctors without Borders, *opus cite*

<sup>184</sup> art. 21(3) of the Legislative Decree n. 25/2008

<sup>185</sup> Circular Letter n. 1305 by the Ministry of Interior, April 2011

<sup>186</sup> UN Special Rapporteur on the human rights of migrants, [Report drafted following his third country visit in Italy during his regional study on the human rights of migrants at the borders of the European Union](#), 8 October 2012

<sup>187</sup> Article 14 (5)(6)(7) of the TU 286/1998 modified by the Law 129/2011.

<sup>188</sup> Iyengar et al., [A Legal Guide to Immigration Detention in Italy: an English overview of the Italian, European and international legal framework that governs immigration detention in Italy](#), April 2013

expulsion and detention of non-EU migrants is a lay judge (*giudici di pace*) without any particular expertise on immigration issues.<sup>189</sup>

After the initial period of detention of 30 days, if the verification of the identity and of the nationality of the migrant or the release of travel documents are particularly difficult to carry out, the judge of peace, upon the request by the Chief of the Questura, may prolong the detention in CIE for another 30 days. In case the mentioned difficulties persist, the detention can be prolonged for 60 days. The judicial review of the lawfulness of detention is carried out every 60 days until the end of the detention that can last maximum up to 18 months<sup>190</sup>.

The migrant has the right to challenge the detention: the Consolidated Immigration Act, in fact, provides the right to appeal a detention order or an order extending detention<sup>191</sup>. According to one source<sup>192</sup>, in many cases the appeals are done inside CIEs and statistics on the number of appeals are not available.

## E. Legal assistance

### Indicators:

- Does the law provide for access to free legal assistance for the review of detention?  
☒ Yes      ☐ No
- Do asylum seekers have effective access to free legal assistance in practice?    ☒ Yes    ☐ No

The asylum seeker is free to appoint a lawyer of their choice. The asylum seeker can also request a court-appointed lawyer.

Generally, in practice lawyers appointed by the State have no specific expertise in the field of refugee laws and they may not offer effective legal assistance due to lack of interest in preparing the case. Moreover, according to some legal experts assigned attorneys may not have enough time to prepare the case as they are usually appointed in the morning of the hearing.<sup>193</sup>

According to UNHCR “in cases of detainees awaiting deportation in Identification and Expulsion Centres (CIEs) there have also been reports of difficulties in lodging asylum applications, either because of a lack of adequate information or legal assistance, or due to bureaucratic obstacles”.<sup>194</sup>

<sup>189</sup> UN Special Rapporteur on the human rights of migrants, [Report drafted following his third country visit in Italy during his regional study on the human rights of migrants at the borders of the European Union](#), 8 October 2012

<sup>190</sup> Article 14(3)-(5) of the TU 286/1998 modified by the Law 129/2011.

<sup>191</sup> Article 14(6) of the TU n. 286/1998.

<sup>192</sup> Global Detention Project, [Italy Detention Profile](#), November 2012

<sup>193</sup> Iyengar et al., *op.cit.*

<sup>194</sup> See UN High Commissioner for Refugees, UNHCR Recommendations on Important Aspects of Refugee Protection in Italy, July 2012, p. 12.